

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

318

By: Senator Gibson

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE §23-18-321 TO ESTABLISH GENERAL STANDARDS OF CONDUCT FOR DIRECTORS OF ELECTRIC COOPERATIVES; TO ALLOW THE BOARDS OF DIRECTORS OF ELECTRIC COOPERATIVES TO TAKE ACTION BY MEANS OTHER THAN A MEETING OF DIRECTORS; PROVIDING STANDARDS CONCERNING CONFLICT OF INTEREST TRANSACTIONS INVOLVING DIRECTORS OF ELECTRIC COOPERATIVES; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code §23-18-321 is hereby amended to read as follows:

"23-18-321. Board of directors. (a) The business and affairs of a corporation shall be managed by a board of directors, not less than three (3) in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by this subchapter, by the articles of incorporation, or by the bylaws of the corporation.

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

(A) in good faith;

(B) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(C) in a manner he reasonably believes to be in the best interests of the corporation.

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

(A) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the

matters presented;

(B) legal counsel, public accountants, engineers, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(C) a committee of the Board of Directors of which he is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subdivision (2) of this subsection unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(b) The bylaws may prescribe qualifications for directors.

(c) The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the bylaws.

(d) The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the bylaws, by the members.

(e) Any vacancy occurring in the board and any directorship to be filled shall be filled, as provided in the bylaws, by persons who shall serve until directors may be regularly elected as provided for in this subchapter.

(f)(1) Meetings of the board, regular or special, shall be held at such place and upon such notice as the bylaws may prescribe.

(2) Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(3) Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

(4) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and

included in the minutes or filed with the corporate records reflecting the action taken.

(5) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(g) (1) A majority of the board shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board unless the act of a greater number is required by the articles of incorporation or the bylaws.

(h) (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

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

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

(C) the transaction was fair to the corporation.

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

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

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

(3) For purposes of this (1) (A) of this subsection, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction,

but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this subsection. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under (1)(A) of this subsection if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

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

SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 4. EMERGENCY. It is hereby found and determined by the General Assembly that the Arkansas Business Corporation Act, enacted in 1987 establishes general standards for directors, defines director conflict of interest and permits directors to conduct meetings through the use of any means of communication; and that the Arkansas Business Corporation Act does not apply to a corporation organized for the purpose of engaging in rural electrification; and that the adoption of standards for directors, the

defining of director conflict of interest and the authority for directors to conduct meetings through the use of any means of communication would be in the best interest of the membership of a corporation organized for the purpose of engaging in rural electrification; therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.