CHAPTER 49

Electric Cooperatives

ARTICLE 1

General Provisions

**SECTION 33‑49‑10.** Short title.

 This chapter may be cited as the “Electric Cooperative Act”.

HISTORY: 1962 Code Section 12‑1001; 1952 Code Section 12‑1001; 1942 Code Section 8555‑91; 1939 (41) 240; 2004 Act No. 179, Section 1.

**SECTION 33‑49‑20.** Definitions.

 In this chapter, unless the context otherwise requires:

 (1) “person” includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic;

 (2) “member” means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership;

 (3) “articles of incorporation” includes the articles of conversion of a converted corporation;

 (4) “commission” means the South Carolina Public Service Commission;

 (5) “corridor” means the area within 300 feet of an electric supplier’s distribution lines as described in Act 432 of 1969.

 Corporations organized under this chapter and corporations which become subject to this chapter in the manner provided herein are hereinafter referred to as “cooperatives”.

HISTORY: 1962 Code Section 12‑1002; 1952 Code Section 12‑1002; 1942 Code Sections 8555‑92, 8555‑106, 8555‑121; 1939 (41) 240; 1972 (57) 2757; 2004 Act No. 179, Section 2.

**SECTION 33‑49‑30.** Waiver of notice.

 Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

HISTORY: 1962 Code Section 12‑1003; 1952 Code Section 12‑1003; 1942 Code Section 8555‑114; 1939 (41) 240.

**SECTION 33‑49‑40.** Acknowledgments.

 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.

HISTORY: 1962 Code Section 12‑1004; 1952 Code Section 12‑1004; 1942 Code Section 8555‑115; 1939 (41) 240.

**SECTION 33‑49‑50.** Exemption from control of Public Service Commission.

 Cooperatives and foreign corporations transacting business in this State pursuant to this chapter, except for the provisions of Sections 58‑27‑40, 58‑27‑610 through 58‑27‑670, 58‑27‑820, 58‑27‑840, 58‑27‑1210, 58‑27‑1270, 58‑27‑1280 and 58‑27‑210, shall be exempt from the jurisdiction and control of the Public Service Commission of this State.

HISTORY: 1962 Code Section 12‑1005; 1952 Code Section 12‑1005; 1942 Code Section 8555‑119; 1939 (41) 240; 1969 (56) 740.

**SECTION 33‑49‑60.** Uniform Securities Act provisions are not applicable.

 The provisions of Chapter 1 of Title 35 shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or foreign corporation transacting business in this State pursuant to this chapter, to the United States of America or any agency or instrumentality thereof or to any mortgage or deed of trust executed to secure the same. The provisions of said Title shall not apply to the issuance of membership certificates by any cooperative or any such foreign corporation.

HISTORY: 1962 Code Section 12‑1006; 1952 Code Section 12‑1006; 1942 Code Section 8555‑120; 1939 (41) 240.

**SECTION 33‑49‑70.** Recording of mortgages; effect thereof.

 Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this State pursuant to this chapter which by its terms creates a lien upon real and personal property then owned or after‑acquired and which is recorded as a mortgage of real property in any county in which such property is located or is to be located shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office in such county as a mortgage of personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after‑acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record, affecting such property.

HISTORY: 1962 Code Section 12‑1008; 1952 Code Section 12‑1008; 1942 Code Section 8555‑113; 1939 (41) 240.

**SECTION 33‑49‑80.** Filing of papers by Secretary of State.

 Articles of incorporation, amendment, consolidation, merger, conversion or dissolution and certificates of election to dissolve and affidavits of compliance, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by the applicable provisions of this chapter shall be presented to the Secretary of State for filing in the records of his office. If the Secretary of State shall find that the articles presented conform to the requirements of this chapter, he shall, upon the payment of fees as in this chapter provided, file the articles so presented in the records of his office and upon such filing the incorporation, amendment, consolidation, merger, conversion or dissolution provided for therein shall be in effect.

HISTORY: 1962 Code Section 12‑1009; 1952 Code Section 12‑1009; 1942 Code Section 8555‑109; 1939 (41) 240.

**SECTION 33‑49‑90.** Transmission and filing certified copies of articles in clerks’ offices.

 The Secretary of State immediately upon the filing in his office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion or dissolution shall be located. Any such clerk, upon receipt of any such certified copy, shall file and index the same in the records of his office but the failure of the Secretary of State or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. In addition the Secretary of State shall forward to the clerk of court or register of mesne conveyance of any county in which such cooperative owns property affected a certified copy of any such document. The clerk of court or register of mesne conveyance shall file such document in an appropriate book or file to be provided for such purpose.

HISTORY: 1962 Code Section 12‑1010; 1952 Code Section 12‑1010; 1942 Code Section 8555‑109; 1939 (41) 240.

**SECTION 33‑49‑100.** Fees.

 The Secretary of State shall charge and collect for:

 (1) Filing articles of incorporation, ten dollars;

 (2) Filing articles of amendment, three dollars;

 (3) Filing articles of consolidation or merger, five dollars;

 (4) Filing articles of conversion, three dollars;

 (5) Filing certificate of election to dissolve, three dollars;

 (6) Filing articles of dissolution, five dollars; and

 (7) Filing certificate of change of principal office, three dollars.

HISTORY: 1962 Code Section 12‑1011; 1952 Code Section 12‑1011; 1942 Code Section 8555‑117; 1939 (41) 240.

**SECTION 33‑49‑110.** All papers shall be filed in quadruplicate.

 All papers filed in the office of the Secretary of State pursuant to the provisions of this chapter shall be filed in quadruplicate.

HISTORY: 1962 Code Section 10‑1012; 1952 Code Section 12‑1012; 1942 Code Section 8555‑117; 1939 (41) 240.

**SECTION 33‑49‑120.** Cooperatives and foreign corporations shall be subject to all taxes except income taxes.

 Each cooperative and each foreign corporation transacting business in this State pursuant to this chapter, beginning with taxes to be assessed on December 31, 1969, shall be subject to and pay property taxes levied by the State, any county, municipality, school district or any other taxing subdivision, and shall be subject to and pay such other taxes as may be imposed by law, but shall be exempt from income taxes.

HISTORY: 1962 Code Section 12‑1013; 1952 Code Section 12‑1013; 1942 Code Section 8555‑118; 1939 (41) 240; 1969 (56) 740.

**SECTION 33‑49‑130.** Construction of chapter.

 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.

HISTORY: 1962 Code Section 12‑1007; 1952 Code Section 12‑1007; 1942 Code Section 8555‑122; 1939 (41) 240.

**SECTION 33‑49‑140.** Certain rights and agreements not affected.

 Nothing contained herein shall affect the service areas and agreements between suppliers, as they exist on the effective date of this act as referenced in Section 58‑31‑430. Further, nothing contained herein shall affect the powers or service rights of electric cooperatives as referenced in Section 58‑27‑620(6). Nothing contained herein shall authorize an electric supplier to replace another electric supplier’s existing service, except as provided in Chapter 27 of Title 58.

HISTORY: 2004 Act No. 179, Section 3.

ARTICLE 3

Incorporation; Bylaws and Powers

**SECTION 33‑49‑210.** Purpose of organization under this chapter.

 Cooperative nonprofit membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof.

HISTORY: 1962 Code Section 12‑1021; 1952 Code Section 12‑1021; 1942 Code Section 8555‑92; 1939 (41) 240; 2004 Act No. 179, Section 4.

**SECTION 33‑49‑220.** Organizers.

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

HISTORY: 1962 Code Section 12‑1022; 1952 Code Section 12‑1022; 1942 Code Section 8555‑95; 1939 (41) 240.

**SECTION 33‑49‑230.** Articles of incorporation.

 The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed and acknowledged by each of the incorporators and shall state:

 (1) The name of the cooperative;

 (2) The address of its principal office;

 (3) The names and addresses of the incorporators;

 (4) The names and addresses of the persons who shall constitute its first board of trustees; and

 (5) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

 Such articles of incorporation shall be submitted to the Secretary of State for filing as provided in this chapter.

 It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

HISTORY: 1962 Code Section 12‑1023; 1952 Code Section 12‑1023; 1942 Code Section 8555‑96; 1939 (41) 240.

**SECTION 33‑49‑240.** Name of cooperative.

 The name of each cooperative shall include the words “electric” and “cooperative” and the abbreviation “Inc.”; provided, however, such limitation shall not apply if, from an affidavit made by the president or vice‑president of a cooperative and filed with the Secretary of State, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from any other corporation organized under the laws of or authorized to transact business in this State. The words “electric” and “cooperative” shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this State, except a cooperative or a corporation transacting business in this State pursuant to the provisions of this chapter.

HISTORY: 1962 Code Section 12‑1024; 1952 Code Section 12‑1024; 1942 Code Section 8555‑94; 1939 (41) 240.

**SECTION 33‑49‑250.** Powers of cooperative.

 In addition to the powers conferred on all private corporations by Section 33‑3‑102, a cooperative has power:

 (1) 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 percent of the number of its members; provided, however, that the foregoing members, governmental agencies, political subdivisions, other persons, or the premises to be served must be located in an area a cooperative is permitted to serve pursuant to Section 58‑27‑610 through Section 58‑27‑670 or by the provisions of this chapter. Subject to the provisions of Section 58‑27‑1360, the act of incorporating or annexing into a city or town an area in which the cooperative is serving constitutes the consent of the governing body of such city or town for the cooperative to continue serving all premises then being served by the cooperative and such cooperative is empowered to so serve. A cooperative shall not extend service to any premises initially requiring electric service after February 19, 2004 in any part of any city or town unless: (a) such premises is within the municipal limits of the city or town as those municipal limits existed on February 19, 2004 and either: (i) the cooperative was the principal supplier of electricity to the city or town or (ii) the cooperative had the legal right to serve such premises prior to February 19, 2004, and the cooperative is empowered to so serve unless the governing body of such city or town directs otherwise; or (b) such premises is located in an area annexed or incorporated after February 19, 2004 and is either: (i) within an area assigned to the cooperative by the commission pursuant to Act 432 of 1969, prior to annexation or incorporation, including corridors which lie within the boundaries of the cooperative’s assigned territory, and the act of incorporating or annexing such area constitutes the consent of the governing body of such city or town for the cooperative to provide such service and the cooperative is empowered to so serve unless the governing body of the city or town directs otherwise; or (ii) within an area left unassigned by the commission prior to annexation or incorporation, including corridors which lie within the boundaries of the unassigned territory, and the act of incorporating or annexing such area constitutes the consent of the governing body of such city or town for the cooperative to provide such service and the cooperative is empowered to so serve unless the governing body of such city or town directs otherwise. However, a cooperative is not empowered to serve premises first requiring service after annexation into a city or town in which the city or town or a board of public works or a commission of public works provides electric service unless the governing body of the city or town grants its consent to such service by ordinance and the board or commission of public works, if any, authorizes such service by contract. Provided, further, that a cooperative is not empowered to furnish electrical service to any premises first requiring service in an area annexed by a municipality or incorporated after February 19, 2004 where such premises is located: (a) in an area assigned by the commission prior to annexation or incorporation to an electric supplier other than a cooperative or (b) in a corridor lying within the boundaries of an area assigned by the commission prior to annexation or incorporation to an electric supplier other than a cooperative. In the event of a violation of the provisions of this subsection, the municipality or any affected board of public works or commission of public works or any affected supplier of electricity may institute an action in the court of common pleas of the county in which the violation occurs to compel compliance with the provisions of this subsection;

 (2) to make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such person in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, to purchase, acquire, lease, sell, distribute, install, and repair such electric and plumbing fixtures, appliances, apparatus, and equipment and to accept or otherwise acquire and to sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

 (3) to make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining, and operating electric refrigeration plants;

 (4) to become a member in one or more other cooperatives or corporations or to own stock therein;

 (5) to construct, purchase, take, receive, lease as lessee or otherwise acquire, to own, hold, use, equip, maintain, and operate and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants, and equipment, and any and all kinds and classes of real or personal property whatsoever which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

 (6) to purchase or otherwise acquire, to own, hold, use, and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights of way, and easements;

 (7) to borrow money and otherwise contract indebtedness, to issue notes, bonds, and other evidences of indebtedness therefor and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any and all of its then owned or after‑acquired real or personal property, assets, franchises, revenues, or income;

 (8) to construct, maintain, and operate electric transmission and distribution lines along, upon, under, and across all public thoroughfares including, without limitation of the generality of the foregoing, all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly‑owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

 (9) to exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

 (10) to conduct its business and exercise any or all of its powers within or without this State; and

 (11) to do and perform any and all other acts and things and to have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

HISTORY: 1962 Code Section 12‑1025; 1952 Code Section 12‑1025; 1942 Code Section 8555‑93; 1939 (41) 240; 1963 (53) 495; 2004 Act No. 179, Section 5.

Code Commissioner’s Note

2004 Act No. 179, Section 9.(B), directed the Code Commissioner to change all references in this section to “effective date of this act” or “effective date of this enactment” to the actual effective date of 2004 Act No. 179 which took effect without the Governor’s signature on February 19, 2004.

**SECTION 33‑49‑255.** Restrictions on interruption of electric service to residential customer for nonpayment of bill; exceptions.

 (A) Except as provided in subsection (B) of this section, an electric cooperative must not interrupt electric service to any residential customer for nonpayment of a bill until twenty‑five days have elapsed from the date of billing.

 (B) An electric cooperative may interrupt electric service to a residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer’s prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero; (2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the electric cooperative to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the electric cooperative is accepting cash payments. For purposes of this subsection, a business day is any day in which the electric cooperative, or an agent, is accepting cash payments.

 (C) Nothing contained herein shall be construed so as to relieve an electric cooperative of the requirements of Act 313 of 2006.

 (D) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law and notwithstanding Section 58‑27‑210, the Public Service Commission shall have no jurisdiction over an electric cooperative by reason of this section.

HISTORY: 2010 Act No. 258, Section 4, eff June 11, 2010.

**SECTION 33‑49‑260.** Sale of assets.

 (a) A sale (which term shall include a sale, lease, exchange or any other disposition of assets, except a mortgage of or other security interest in the assets) of all, or substantially all, the property and assets, with or without the goodwill, of a cooperative may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized in the following manner:

 (1) The board of trustees shall adopt a resolution recommending such sale, and directing the submission thereof to a vote at a meeting of members, which may be either an annual or a special meeting.

 (2) Written or printed notice shall be given to each member of record entitled to vote at such meeting within the time and in the manner provided for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale.

 (3) At such meeting the members may authorize such sale, and may fix, or may authorize the board of trustees to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative therefor. Each member of the cooperative shall be entitled to vote thereon. Such authorization shall require the affirmative vote of at least two thirds of all the members of the cooperative.

 (b) The articles of incorporation or bylaws of any cooperative may contain a provision prescribing for approval of any sale of assets a vote greater than, but in no event less than, that prescribed by subsection (a) of this section.

 (c) After such authorization by a vote of the members, the board of trustees nevertheless, in its discretion, may abandon such sale of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

HISTORY: 1962 Code Section 12‑1035; 1952 Code Section 12‑1035; 1942 Code Section 8555‑111; 1939 (41) 240; 1970 (56) 1967.

**SECTION 33‑49‑270.** Mortgage or pledge of assets.

 A mortgage or pledge of or other security interest in all or any part of the assets of a cooperative, whether or not in the usual and regular course of its business, may be made by authority of the board of trustees of the cooperative without authorization of the members, unless the articles of incorporation or bylaws shall specifically so require.

HISTORY: 1962 Code Section 12‑1035.1; 1970 (56) 1967.

**SECTION 33‑49‑280.** Bylaws.

 The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

HISTORY: 1962 Code Section 12‑1026; 1952 Code Section 12‑1026; 1942 Code Section 8555‑97; 1939 (41) 240.

ARTICLE 5

Members

**SECTION 33‑49‑410.** Membership.

 No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member thereof if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

HISTORY: 1962 Code Section 12‑1031; 1952 Code Section 12‑1031; 1942 Code Section 8555‑98; 1939 (41) 240.

**SECTION 33‑49‑420.** Meetings.

 An annual meeting of the members shall be held at such time as shall be provided in the bylaws. Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per cent of the members or by the president. Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision all meetings shall be held in the city or town in which the principal office of the cooperative is located.

 Except as herein otherwise provided, written or printed notice stating the time and place of each meeting of 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 nor more than twenty‑five days before the date of the meeting.

HISTORY: 1962 Code Section 12‑1032; 1952 Code Section 12‑1032; 1942 Code Section 8555‑98; 1939 (41) 240.

**SECTION 33‑49‑430.** Quorum.

 Five per cent of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. 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.

HISTORY: 1962 Code Section 12‑1033; 1952 Code Section 12‑1033; 1942 Code Section 8555‑98; 1939 (41) 240.

**SECTION 33‑49‑440.** Voting.

 Each member is entitled to one vote on each matter submitted to a vote at a meeting. Voting must be in person but, if the bylaws provide, also may be by proxy. If the bylaws provide for voting by proxy they also must prescribe the conditions under which proxy voting may be exercised. A person may not vote as proxy unless he is a member of the cooperative and may not vote as proxy for more than three members at a meeting of the members.

HISTORY: 1962 Code Section 12‑1034; 1952 Code Section 12‑1034; 1942 Code Section 8555‑98; 1939 (41) 240; 1989 Act No. 75, Section 1.

**SECTION 33‑49‑450.** Disposition of propositions presented by not less than ten per cent of members.

 Notwithstanding any other provision of this chapter, any proposition embodied in a petition signed by not less than ten per cent of the members of a cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative, either at a special meeting of the members held within forty‑five days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

HISTORY: 1962 Code Section 12‑1036; 1952 Code Section 12‑1036; 1942 Code Section 8555‑107; 1939 (41) 240.

**SECTION 33‑49‑460.** Patronage capital contributions, allocations, and retirements.

 (A) Each cooperative’s bylaws shall provide for patronage capital contributions, allocations, and retirements in the manner provided by this section.

 (B) Patronage capital shall be determined by a cooperative on an annual basis and shall be the amount by which the cooperative’s electric revenues exceed its costs of doing business.

 (C) On an annual basis, patronage capital shall be allocated on the books of the cooperative to each member based upon and in proportion to:

 (1) the revenue from each member or group of similar members;

 (2) the contribution of each member or group of similar members to the cooperative’s overall patronage capital; or

 (3) any combination of items (1) and (2) as determined by the board of trustees.

 The allocation of patronage capital to a member’s account does not vest until such time that the board determines that retirement is proper pursuant to subsection (D).

 (D) Retirement of patronage capital is the actual payment, as provided by subsection (E), of patronage capital to the cooperative members to whom it has previously been allocated. The board of trustees of a cooperative may, in its discretion, utilize its business judgment to retire patronage capital as allocated on the books of the cooperative when the retirement is consistent with sound business and management practices and the long‑term financial stability of the cooperative. If the board of trustees, in its discretion, utilizes its business judgment to retire patronage capital to members either upon their death, termination of electric service, or bankruptcy, then the retirement may be discounted from the board’s approved retirement cycle to present‑day value when deemed appropriate by the board of trustees in the exercise of its business judgment.

 (E) When the board of trustees of the cooperative has determined, pursuant to subsection (D), that patronage capital shall be retired, the retirement may be accomplished by a bill credit or by the mailing of payment or notice of payment to the person’s last known address of record on file with the cooperative. No interest shall be paid or payable by the cooperative on any patronage capital furnished by its members.

 (F) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., patronage capital that has been retired by a cooperative but remains unclaimed for a period of seven years shall become abandoned patronage capital. The cooperative shall, nonetheless, pay any validated claims by members or former members for unclaimed or abandoned patronage capital. With respect to abandoned patronage capital, the cooperative must follow the procedures set forth in subsection (G). Each year, the cooperative may impose a reasonable administrative fee for abandoned or unclaimed patronage capital and may offset the fee against such abandoned or unclaimed patronage capital. Abandoned patronage capital shall be designated as equity and, at the board’s direction, can be used only by the cooperative for:

 (1) energy efficiency programs and education;

 (2) renewable energy initiatives; or

 (3) educational or charitable purposes.

 (G) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., electric cooperatives must pay any validated claims from members or former members for abandoned patronage capital in accordance with the provisions of this subsection.

 (1) Patronage capital, presumed abandoned, which is due to members or former members of electric cooperatives organized pursuant to Section 33‑49‑10 and whose last known address is in South Carolina, may be retained by the electric cooperative provided that the electric cooperative performs the following due diligence duties to locate the rightful owners:

 (a) the cooperative shall publish, for two consecutive years, in a newspaper of general circulation in the county of the cooperative’s principal place of business, the names and addresses of each person appearing from the cooperative’s records to be the owner of the unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed;

 (b) the cooperative shall publish, no less than annually, in its official publication, either in print or electronically, the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue for the earlier of two consecutive years or until the patronage capital has been paid to the rightful owner; and

 (c) the cooperative shall maintain a searchable website on which will be listed the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed and abandoned patronage capital of fifty dollars or more, together with instructions on how to claim the property. The listings will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue until the patronage capital has been paid to the rightful owner. The Office of State Treasurer shall maintain a link on the state’s Unclaimed Property Website to the cooperative’s searchable website to increase public awareness and access.

 (2) A person aggrieved by a decision of the cooperative or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the court of common pleas of the county of the cooperative’s principal place of business. The action must be brought within ninety days after the decision of the cooperative or within one hundred eighty days after the filing of the claim if the cooperative has failed to act on it.

 (3) The patronage capital accounts still unpaid that were included on previously filed annual unclaimed property reports for which no property was delivered will be returned to the respective cooperatives and will be treated in the same manner as provided by this section for patronage capital.

 (4) The administrator, as defined in Section 27‑18‑20(1), shall not be responsible or held liable for any unclaimed patronage capital accounts retained by a cooperative pursuant to this section.

 (5) The cooperative shall consider each claim filed by a person claiming an interest in patronage capital within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. If a claim is allowed, the cooperative shall pay over or deliver to the claimant the patronage capital owed to the claimant at the time the patronage capital became abandoned.

HISTORY: 1962 Code Section 12‑1037; 1952 Code Section 12‑1037; 1942 Code Section 8555‑110; 1939 (41) 240; 2011 Act No. 44, Section 2, eff June 7, 2011.

Editor’s Note

2011 Act No. 44, Sections 1, 4, and 7, provide as follows:

“SECTION 1. The General Assembly determines it is in the best interest of South Carolina, the electric cooperatives, and their members to advocate energy efficiency and renewable energy initiatives in South Carolina.

“The General Assembly determines it is prudent to update and clarify procedures for South Carolina’s electric cooperatives to contribute, allocate, and retire patronage capital.

“The General Assembly determines it is prudent to clarify that South Carolina’s electric cooperatives may utilize the defense known as the “business judgment rule”.

“The General Assembly determines it is in the best interest of South Carolina’s electric cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.”

“SECTION 4. The General Assembly determines it is in the best interests of South Carolina, the telephone cooperatives, and their members to assist with educational, charitable, and economic development efforts in the rural areas of South Carolina.

“The General Assembly determines it is prudent to update and clarify the procedures for South Carolina’s telephone cooperatives to contribute, allocate, and retire patronage capital.

“The General Assembly determines it is prudent to clarify that the “business judgment rule” applies to South Carolina’s telephone cooperatives.

“The General Assembly determines it is in the best interest of South Carolina’s telephone cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.”

“SECTION 7. This act takes effect upon approval by the Governor and applies to patronage capital determined to be unclaimed as of the effective date of the act.”

Effect of Amendment

The 2011 amendment rewrote the section.

**SECTION 33‑49‑470.** Liability of members.

 The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

HISTORY: 1962 Code Section 12‑1038; 1952 Code Section 12‑1038; 1942 Code Section 8555‑112; 1939 (41) 240.

ARTICLE 7

Trustees, Officers and Employees

**SECTION 33‑49‑610.** Trustees.

 (A) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative which is a member of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board, and the filling of vacancies on the board.

 (B) The bylaws also may provide for the removal of trustees from office and for the election of their successors as follows:

 (1)(a) A temporary suspension of a trustee for cause may occur upon the affirmative vote of at least two‑thirds of the members of the board until the next annual or special meeting. At that meeting the membership may remove the suspended trustee for cause from the board by an affirmative vote of a majority of the members present and voting. In the event the membership refuses to vote to remove the trustee, he must be reinstated immediately with all the powers of his office and continue to serve for the remainder of his elected term.

 (b) “Cause” for removal of a trustee under this section means fraudulent or dishonest acts, or gross abuse of authority in the discharge of duties to the cooperative and must be established after written notice of specific charges and opportunity to meet and refute charges.

 (2) A successor may be elected as provided by the bylaws of the cooperative.

 This subsection does not apply to a cooperative when a majority of its members are other cooperatives. Cooperatives which are excluded from the removal provisions of this subsection may provide any terms and conditions for removal of trustees as may be authorized in their bylaws.

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

 (D) The board of trustees may exercise all of the powers of a cooperative except those powers conferred upon the members by this chapter, its articles of incorporation, or bylaws.

HISTORY: 1962 Code Section 12‑1041; 1952 Code Section 12‑1041; 1942 Code Section 8555‑99; 1939 (41) 240; 1989 Act No. 75, Section 2.

**SECTION 33‑49‑620.** Voting districts for trustees and for delegates.

 Notwithstanding any other provision of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district:

 (1) A designated number of trustees shall be elected by the members residing therein;

 (2) A designated number of delegates shall be elected by such members; or

 (3) Both such trustees and delegates shall be elected by such members.

 In any such case the bylaws shall prescribe the manner in which such voting districts, the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

HISTORY: 1962 Code Section 12‑1042; 1952 Code Section 12‑1042; 1942 Code Section 8555‑100; 1939 (41) 240.

**SECTION 33‑49‑630.** Compensation or employment of trustee.

 The bylaws may make provision for the compensation of trustees; provided, however, that compensation shall not be paid except for actual attendance upon activities authorized by the board. The bylaws may also provide for the travel, expenses and other benefits of trustees, as set by the board. A trustee, except in emergencies, shall not be employed by the cooperative in any other capacity involving compensation.

HISTORY: 1962 Code Section 12‑1043; 1952 Code Section 12‑1043; 1942 Code Section 8555‑99; 1939 (41) 240; 1976 Act No. 631.

**SECTION 33‑49‑640.** Annual election and term of trustees.

 The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as herein otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

HISTORY: 1962 Code Section 12‑1044; 1952 Code Section 12‑1044; 1942 Code Section 8555‑99; 1939 (41) 240.

**SECTION 33‑49‑650.** Division of trustees into classes.

 The bylaws may provide that in lieu of electing the whole number of trustees annually (a) the trustees shall be divided into two classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting or (b) the trustees shall be divided into three classes at the first or any subsequent annual meeting, each class to be as nearly equal as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting, the term of the second class to expire at the second succeeding annual meeting and the term of the third class to expire at the third succeeding annual meeting. At each annual meeting after such classification a number of trustees equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second or third succeeding annual meeting, as the case may be, and until their respective successors shall have been elected and duly qualified.

HISTORY: 1962 Code Section 12‑1045; 1952 Code Section 12‑1045; 1942 Code Section 8555‑99; 1939 (41) 240; 1949 (46) 87.

**SECTION 33‑49‑660.** Quorum of trustees.

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

HISTORY: 1962 Code Section 12‑1046; 1952 Code Section 12‑1046; 1942 Code Section 8555‑99; 1939 (41) 240.

**SECTION 33‑49‑670.** Officers and employees.

 The officers of a cooperative shall consist of a president, vice‑president, secretary and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

HISTORY: 1962 Code Section 12‑1047; 1952 Code Section 12‑1047; 1942 Code Section 8555‑101; 1939 (41) 240.

**SECTION 33‑49‑680.** Definitions; indemnification of officers, trustees, employees, and agents, insurance.

 (A) As used in this section:

 (1) “action” means a threatened, pending, or completed court suit, proceeding, or action;

 (2) “good faith” includes a reasonable belief that an act was in, or not opposed to, the best interest of a electric cooperative or employee benefit plan;

 (3) “fine” includes excise taxes assessed on a person with respect to an employee benefit plan;

 (4) “serving at the request of the cooperative” includes service by a trustee or director of a cooperative or an affiliated organization and includes service by him with respect to an employee benefit plan, its participants, or beneficiaries when he acted in good faith.

 (B) A cooperative may indemnify a person who was or is a party to any action, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the cooperative), because he is or was a trustee, officer, employee, or agent of the cooperative, or is or was serving at the request of the cooperative as a trustee or director of another cooperative or affiliated organization, against expenses (including attorney’s fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with the action if he acted in good faith and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of an action by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not create a presumption that the person did not act in good faith and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

 A cooperative may indemnify a person who was or is a party to an action by or in the right of the cooperative to procure a judgment in its favor because he is or was a trustee or director of the cooperative or affiliated organization, or is or was serving at the request of the cooperative as a trustee or director of another cooperative or affiliated organization, against expenses (including attorney’s fees) actually and reasonably incurred by him in connection with the defense or settlement of the action if he acted in good faith. Indemnification may be made in respect of any issue for which the person has been adjudged to be liable to the cooperative only to the extent that the officer presiding over the action determines upon application that, despite the adjudication of liability, the person is entitled to indemnity for expenses which the presiding officer considers proper.

 (C) To the extent a trustee of a cooperative has been successful in defense of an action or in defense of an issue referred to in (B) and (C) of this section, he must be indemnified against expenses (including attorney’s fees) actually and reasonably incurred by him in connection therewith.

 (D) An indemnification under (B) and (C) of this section, unless ordered by a court, must be made by the cooperative only as authorized in the specific case upon a determination that indemnification of the trustee is proper. The determination must be made (1) by the board of trustees by a majority vote of a quorum consisting of trustees who were not parties to the action, or (2) if a quorum is not obtainable, or, even if obtainable, a quorum of disinterested trustees so directs, by independent legal counsel in a written opinion, or (3) by the members of the cooperative.

 (E) Expenses incurred by a trustee in defending a civil or criminal action may be paid by the cooperative in advance of the final disposition of the action upon receipt of an undertaking by or on behalf of the trustee to repay the amount if it is determined that he is not entitled to be indemnified by the cooperative. The expenses incurred by other officers or employees and agents may be paid upon terms and conditions the board of trustees considers appropriate.

 (F) The indemnification and advancement of expenses provided by this section is not exclusive of other rights to which those seeking indemnification and advances of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested trustees, or of other action of the cooperative in his official capacity or in another capacity while holding office.

 (G) A cooperative may purchase and maintain insurance on behalf of a person who is or was a trustee or director of the cooperative, or any affiliated organization or who was serving at the request of the cooperative as a trustee of another cooperative, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status, whether or not the cooperative has the power to indemnify him against the liability under this section.

 (H) The indemnification and advancement of expenses authorized by this section, unless otherwise provided when authorized or ratified, continues as to a person who has ceased to be a trustee, director, officer or employer, or agent and inures to the benefit of his heirs.

HISTORY: 1988 Act No. 571.

Code Commissioner’s Note

Pursuant to the direction to the Code Commissioner in 2004 Act No. 179, Section 9.(A), “rural electric cooperative” was changed to “electric cooperative” in paragraph (A)(2).

**SECTION 33‑49‑690.** Immunity.

 All directors, trustees, or members of the governing bodies of electric cooperatives organized under this chapter are immune from suit arising from the conduct of the affairs of these electric cooperatives in the same manner and under the same conditions as directors, trustees, and members of the governing bodies of not‑for‑profit cooperatives, corporations, associations, and organizations are immune under Section 33‑31‑834. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the electric cooperatives.

HISTORY: 1994 Act No. 384, Section 7.

ARTICLE 9

Amendment, Consolidation and Merger

**SECTION 33‑49‑810.** Amendment of articles of incorporation.

 A cooperative may amend its articles of incorporation by complying with the following requirements:

 (1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two thirds of those members voting thereon at such special meeting.

 (2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice‑president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state

 (a) the name of the cooperative,

 (b) the address of its principal office,

 (c) the date of the filing of its articles of incorporation in the office of the Secretary of State and

 (d) the amendment to its articles of incorporation.

 The president or vice‑president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1051; 1952 Code Section 12‑1051; 1942 Code Section 8555‑102; 1939 (41) 240.

**SECTION 33‑49‑820.** Change of principal office.

 A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged by its president or vice‑president under its seal attested by its secretary, in the office of the Secretary of State and also in each county office in which the articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed. Such cooperative shall also, within thirty days after filing such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto if the same are not already on file therein.

HISTORY: 1962 Code Section 12‑1052; 1952 Code Section 12‑1052; 1942 Code Section 8555‑102; 1939 (41) 240.

**SECTION 33‑49‑830.** Consolidation of cooperatives.

 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:

 (1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state

 (a) the name of each consolidating cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the Secretary of State,

 (b) the name of the new cooperative and the address of its principal office,

 (c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative,

 (d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of such converted memberships and

 (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

 (2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members of each consolidating cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two thirds of those members of each consolidating cooperative voting thereon at such meeting.

 (3) Upon such approval by the members of the respective consolidating cooperatives, 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 president or vice‑president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1053; 1952 Code Section 12‑1053; 1942 Code Section 8555‑103; 1939 (41) 240.

**SECTION 33‑49‑840.** Merger into another cooperative.

 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:

 (1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state

 (a) the name of each merging cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the Secretary of State,

 (b) the name of the surviving cooperative and the address of its principal office,

 (c) a statement that the merging cooperative elects to be merged into the surviving cooperative,

 (d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships and

 (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

 (2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two thirds of those members of each cooperative voting thereon at such meeting.

 (3) Upon such approval by the members of the respective cooperatives, parties to the proposed merger, 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 president or vice‑president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1054; 1952 Code Section 12‑1054; 1942 Code Section 8555‑104; 1939 (41) 240.

**SECTION 33‑49‑850.** Effect of consolidation or merger.

 The effect of consolidation or merger shall be as follows:

 (1) The several cooperatives, parties to the consolidation or merger, shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, shall cease;

 (2) Such new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives, and, furthermore, all and every interest of, or belonging or due to, each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate, or any interest therein, under the laws of this State vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger;

 (3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged and any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

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

 (5) In the case of a consolidation the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative, and in the case of a merger 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.

HISTORY: 1962 Code Section 12‑1055; 1952 Code Section 12‑1055; 1942 Code Section 8555‑105; 1939 (41) 240.

ARTICLE 11

Dissolution

**SECTION 33‑49‑1010.** Dissolution before commencing business.

 A cooperative which has not commenced business may dissolve voluntarily by delivering to the Secretary of State articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state:

 (1) The name of the cooperative;

 (2) The address of its principal office;

 (3) The date of its incorporation;

 (4) That the cooperative has not commenced business;

 (5) That the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements have been released to the grantors;

 (6) That no debt of the cooperative remains unpaid; and

 (7) That a majority of the incorporators elect that the cooperative be dissolved.

 Such articles of dissolution shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1056; 1952 Code Section 12‑1056; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1020.** Dissolution after commencing business.

 A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the manner provided in this article.

HISTORY: 1962 Code Section 12‑1057; 1952 Code Section 12‑1057; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1030.** Action of board and members.

 Notwithstanding the provisions of Section 33‑49‑450, two‑thirds of the membership of the board of trustees shall first recommend to the membership that the cooperative be dissolved. The proposition that the cooperative be dissolved must be submitted to the membership of the cooperative for a vote at a special meeting of the membership called only for this purpose and held on Saturday. Locations for the special meeting must be set up in every county in which the cooperative provides service. The notice for the meeting at which a proposal to dissolve the cooperative is considered shall set forth:

 (1) a detailed proposition for dissolution;

 (2) the plan for sale and distribution of assets;

 (3) the plan for the continuance of service; and

 (4) the locations of the meeting.

 The special meeting must be called to order by the president or his designee at each of the locations set forth in the notice. No quorum is required to conduct the business of the special meeting and the presiding officer shall promptly order the balloting on the proposition. A vote by the membership for voluntary dissolution of the cooperative must be by written or machine ballot only. The ballot must state the proposition to be voted upon by the members and must contain two boxes, one marked FOR DISSOLUTION and the other marked AGAINST DISSOLUTION. The ballot must direct that the member place an “X” in the box indicating his vote on the proposition. Each member is entitled to one vote on the proposition to dissolve the cooperative. Voting on this proposition must be in person only, except that a member who qualifies to vote an absentee ballot under the categories as designated below may vote by absentee ballot. A member may cast an absentee ballot on the proposition of voluntary dissolution of the cooperative if the member:

 (1) is serving with the Armed Forces, Merchant Marine of the United States, or is a spouse or dependent residing with that person;

 (2) is serving in the Red Cross or with the United Service Organizations, who are attached to and serving with the Armed Forces of the United States, or is a spouse or a dependent residing with that person;

 (3) is physically disabled so as to prevent his attendance at the meeting;

 (4) has his principal residence outside any county in which the cooperative does business;

 (5) is attending sick or physically disabled persons;

 (6) is self‑employed or unemployed and by virtue of vacation plans will be absent from his county of residence on the scheduled meeting day;

 (7) by virtue of vacation plans, will be absent from his county of residence on the scheduled meeting day and the vacation leave having been confirmed by his employer below; or

 (8) is prevented from attending the meeting due to his employment and his inability to attend the meeting is confirmed by his employer as provided in this section.

 A member seeking the privilege of voting an absentee ballot must apply to the cooperative in writing for an absentee ballot within thirty days of the date for submission of the absentee ballot as provided herein. The absentee ballot must be promptly forwarded to the member by depositing it in the United States mail to the last known address of the member, together with a form to be completed and signed by the member setting forth and certifying as to his qualification for voting an absentee ballot. The absentee ballot must be sealed in a blank envelope and together with the executed certification of qualification form inserted into a second envelope bearing the name and account number of the member. The ballot and certification of qualification form, so ensealed, must be returned to the cooperative by mail or otherwise no later than twelve noon of the day prior to the date of the special meeting of members. A member receiving an absentee ballot is entitled to cast a vote at the special meeting. However, after delivering an absentee ballot to the cooperative, if the member registers at the meeting or requests in writing the withdrawal of his absentee ballot prior to the close of registration on the meeting date, the absentee ballot must be voided and destroyed. At the conclusion of the membership balloting, each absentee ballot meeting the requirements of this section or which has not been revoked by registration or written member request must be removed from the envelope containing the member’s identification, mixed with the other unmarked envelopes so as to prevent identification of the person casting the vote and added to the count of votes cast at the meeting. The meeting must begin at seven a.m. and adjourn at seven p.m. of the day set for a special meeting except that any member who has not cast his ballot and is in the process of voting or is waiting to vote must be allowed to vote. The proposed voluntary dissolution is approved upon affirmative vote of not less than two‑thirds of the members of the cooperative. The certificate of qualification for voting an absentee ballot must be in the following form:

Certificate of Qualification for Absentee Ballot

 I hereby apply for an absentee ballot to vote on the proposition of the voluntary dissolution of the cooperative at the special meeting to be held on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_.

 I certify that:

 \_\_\_ (1) I am serving with the Armed Forces, Merchant Marine of the United States, and am prevented by my work relating to this service from attending the meeting, or I am a spouse or dependent who resides with a person so serving.

 \_\_\_ (2) I am serving with the Red Cross or with the United Service Organizations who are attached to and serving with the Armed Forces of the United States, or I am a spouse or dependent who resides with a person so serving.

 \_\_\_ (3) I am physically disabled and am prevented from attending the meeting.

 \_\_\_ (4) My principal residence is outside any county in which the cooperative does business.

 The address of my principal residence is:

\_

 \_\_\_ (5) I am attending a sick or physically disabled person.

 \_\_\_ (6) I am self‑employed or unemployed and by virtue of vacation plans will be absent from my county of residence on the scheduled meeting day.

 \_\_\_ (7) By virtue of vacation plans, I will be absent from my county of residence on the scheduled meeting day. This vacation leave has been confirmed by my employer below.

\_

Employer

 \_\_\_\_\_\_\_\_\_\_ (8) I am prevented from attending the meeting due to my employment, and my inability to attend the meeting has been confirmed by my employer below.

\_

Employer

My cooperative member account number is \_\_\_\_\_\_\_\_\_\_.

\_

Signature

 Unless otherwise provided for in its Articles of Incorporation, bylaws, or by this chapter, the board shall, not less than ten days prior to any election, adopt policies and procedures for the conduct of the election.

HISTORY: 1962 Code Section 12‑1058; 1952 Code Section 12‑1058; 1942 Code Section 8555‑108; 1939 (41) 240; 1989 Act No. 75, Section 3.

**SECTION 33‑49‑1040.** Certificate of dissolution and affidavit.

 Upon such approval a certificate of election to dissolve, in this article designated the “certificate,” shall be executed and acknowledged on behalf of the cooperative by its president or vice‑president and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:

 (1) The name of the cooperative;

 (2) The address of its principal office;

 (3) The names and addresses of its trustees; and

 (4) The total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative.

 The president or vice‑president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of Section 33‑49‑1030 have been duly complied with.

HISTORY: 1962 Code Section 12‑1059; 1952 Code Section 12‑1059; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1050.** Filing of certificate and affidavit; effect thereof.

 Such certificate and affidavit shall be submitted to the Secretary of State for filing as provided in this chapter and thereupon the cooperative shall cease to carry on its business except in so far as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the Secretary of State.

HISTORY: 1962 Code Section 12‑1060; 1952 Code Section 12‑1060; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1060.** Notice of winding up.

 After the filing of the certificate and affidavit by the Secretary of State the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant 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.

HISTORY: 1962 Code Section 12‑1061; 1952 Code Section 12‑1061; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1070.** Power of board of trustees to wind up affairs.

 The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs and, after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

HISTORY: 1962 Code Section 12‑1062; 1952 Code Section 12‑1062; 1942 Code Section 8555‑108; 1939 (41) 240.

**SECTION 33‑49‑1080.** Articles of dissolution.

 When all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of Section 33‑49‑1070, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice‑president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

 (1) The name of the cooperative;

 (2) The address of the principal office of the cooperative;

 (3) That the cooperative has theretofore delivered to the Secretary of State a certificate of election to dissolve and the date on which the certificate was filed by the Secretary of State in the records of his office;

 (4) That all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

 (5) That all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of Section 33‑49‑1070; and

 (6) That there are no actions or suits pending against the cooperative.

 The president or vice‑president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this article have been duly complied with. Such articles of dissolution and affidavit accompanied by proof of the publication required in Section 33‑49‑1060 shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1063; 1952 Code Section 12‑1063; 1942 Code Section 8555‑108; 1939 (41) 240.

ARTICLE 13

Conversion of Other Corporations Into Cooperatives

**SECTION 33‑49‑1210.** Corporations permitted to convert into cooperatives.

 Any corporation organized under the laws of this State for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this chapter with the same effect as if originally organized under this chapter by complying with the requirements of this article.

HISTORY: 1962 Code Section 12‑1071; 1952 Code Section 12‑1071; 1942 Code Section 8555‑106; 1939 (41) 240.

**SECTION 33‑49‑1220.** Articles of conversion.

 The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

 (1) The name of the corporation prior to its conversion into a cooperative;

 (2) The address of the principal office of such corporation;

 (3) The date of the filing of the articles of incorporation of such corporation in the office of the Secretary of State;

 (4) The statute or statutes under which such corporation was organized;

 (5) The name assumed by such corporation;

 (6) A statement that such corporation elects to become a cooperative nonprofit membership corporation subject to this chapter;

 (7) The manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

 (8) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of such corporation.

HISTORY: 1962 Code Section 12‑1072; 1952 Code Section 12‑1072; 1942 Code Section 8555‑106; 1939 (41) 240.

**SECTION 33‑49‑1230.** Approval at membership meeting.

 The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make, shall be deemed to be approved upon 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, upon the affirmative vote of the holders of not less than two thirds of the capital stock of such corporation represented at such meeting.

HISTORY: 1962 Code Section 12‑1073; 1952 Code Section 12‑1073; 1942 Code Section 8555‑106; 1939 (41) 240.

**SECTION 33‑49‑1240.** Execution of articles and affidavit; submission to Secretary of State.

 Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders shall be executed and acknowledged on behalf of such corporation by its president or vice‑president, and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice‑president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this article with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1962 Code Section 12‑1074; 1952 Code Section 12‑1074; 1942 Code Section 8555‑106; 1939 (41) 240.

ARTICLE 15

Foreign Rural Electric Cooperatives

**SECTION 33‑49‑1310.** Foreign rural electric cooperatives may do business in State.

 Any corporation organized on a nonprofit or a cooperative basis for the purpose of furnishing electric energy to persons in rural areas who are not receiving central station service and owning and operating electric transmission or distribution lines in a state adjacent to this State shall be permitted to extend its lines into and to transact business in this State without complying with any statute of this State pertaining to the qualification of foreign corporations for the transaction of business in this State.

HISTORY: 1962 Code Section 12‑1081; 1952 Code Section 12‑1081; 1942 Code Section 8555‑116; 1939 (41) 240.

**SECTION 33‑49‑1320.** Designation of Secretary of State as agent to accept service of process.

 Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this State, shall by an instrument executed and acknowledged in its behalf by its president or vice‑president under its corporate seal attested by its secretary designate the Secretary of State its agent to accept service of process in its behalf.

HISTORY: 1962 Code Section 12‑1082; 1952 Code Section 12‑1082; 1942 Code Section 8555‑116; 1939 (41) 240.

**SECTION 33‑49‑1330.** Suits; securing evidences of indebtedness.

 Any such foreign corporation may sue and be sued in the courts of this State to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after‑acquired real or personal property, assets or franchises located or to be located in this State and also upon the revenues and income thereof.

HISTORY: 1962 Code Section 12‑1083; 1952 Code Section 12‑1083; 1942 Code Section 8555‑116; 1939 (41) 240.

ARTICLE 17

Termination of Electric Service Due to Nonpayment

**SECTION 33‑49‑1410.** Definitions.

 For purposes of this article:

 (1) “Licensed health care provider” means a licensed medical doctor, physician’s assistant, nurse practitioner, or advanced‑practice registered nurse.

 (2) “Special needs account member” means the account of a residential member:

 (a) when the member can furnish to the electric cooperative a certificate on a form provided by the electric cooperative and signed by a licensed health care provider that states that termination of electric service would be dangerous to the health of the member or a person residing in the member’s household at the premises to which electric service is rendered; or

 (b) who suffers from Alzheimer’s disease or dementia as certified by a licensed health care provider.

HISTORY: 2006 Act No. 313, Section 3, eff June 1, 2006; 2012 Act No. 122, Section 3, eff February 22, 2012.

Effect of Amendment

The 2012 amendment in subsection (2), added the subsection identifiers, added subsection (b) relating to Alzheimer’s disease, and made other nonsubstantive changes.

**SECTION 33‑49‑1420.** Termination procedures; contents.

 (A) Each electric cooperative must establish written procedures for termination of service due to nonpayment for a special needs account member at any time and for all residential members during weather conditions marked by extremely cold or hot temperatures. Each electric cooperative must submit its procedures to the Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first.

 (B) The procedures for termination must include the following:

 (1) notification procedures so that the member is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination;

 (2) arrangements for a payment arrangement plan to enable a residential member, who has a satisfactory payment history as determined by the electric cooperative, to pay by installments where the member is unable to pay the full amount due for electric service;

 (3) a procedure to advise members who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of electric bills;

 (4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and

 (5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

HISTORY: 2006 Act No. 313, Section 3, eff June 1, 2006.

**SECTION 33‑49‑1430.** Third‑party notification system.

 Each electric cooperative must consider establishing and maintaining a third‑party notification program to allow a residential member to designate a third party to be notified if the electric service is scheduled for termination.

HISTORY: 2006 Act No. 313, Section 3, eff June 1, 2006.

**SECTION 33‑49‑1440.** Disconnection when public safety emergency exists.

 Notwithstanding another provision of this article, an electric cooperative may disconnect a member when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 3, eff June 1, 2006.

**SECTION 33‑49‑1450.** Private right of action; duty of care.

 This article does not create a new private right of action or a new duty of care. This article does not diminish, increase, affect, or evidence any duty of care existing under the laws of this State prior to the effective date of this article.

HISTORY: 2006 Act No. 313, Section 3, eff June 1, 2006.