

CHAPTER 297

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

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

C.48:24-1 Short title.

1. Sections 1 through 19 of this act shall be known and may be cited as the “New Jersey Rural Electric Cooperative Act.”

C.48:24-2 Definitions relative to rural electric cooperatives.

2. As used in P.L.2017, c.297 (C.48:24-1 et al.):

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

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

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

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

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

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

"Rural area" means any area included within the boundaries of any municipality that, as of the date of the rural electric cooperative's articles of incorporation, has a population of 30,000 inhabitants or less and a population density less than 4,000 persons per square mile, according to the latest federal decennial census, including both the farm and nonfarm population thereof.

"Rural electric cooperative" or "cooperative" means a nonprofit corporation entitled to the rights, benefits, and protections established under P.L.2017, c.297 (C.48:24-1 et al.).

C.48:24-3 Recognition, affirmation of rural electric cooperative.

3. A rural electric cooperative which organized as a rural electric cooperative under the general corporation laws of this State, is hereby recognized and affirmed as a rural electric cooperative entitled to the rights, benefits, and protections established under P.L.2017, c.297 (C.48:24-1 et al.), if formed for any of the following purposes:

a. Furnishing of electric energy to persons who shall be members of the cooperative in rural areas who are not receiving service from an electric public utility;

b. Assisting in the wiring of the premises of persons in rural areas who are members of the cooperative or the acquisition, supply, or installation of electrical or plumbing equipment therein; and

c. Furnishing of electric energy, wiring facilities, electrical equipment, or services in rural areas to the members thereof.

C.48:24-4 Articles of incorporation.

4. The articles of incorporation of a rural electric cooperative existing under P.L.2017, c.297 (C.48:24-1 et al.) shall state:

- a. The name of the cooperative, which shall include the words "Rural Electric Cooperative" and shall not be confusingly similar to the name of any other corporation in this State;
- b. The purposes for which the cooperative is formed;
- c. The names and addresses of the incorporators who shall serve as directors, and manage the affairs, of the cooperative until its first annual meeting of members or until their successors are elected and qualified;
- d. The number of directors, not less than three, to be elected at the annual meetings of members;
- e. The address, including street and number, if any, of the cooperative's registered office;
- f. The period of duration of the cooperative, which may be perpetual;
- g. The terms and conditions upon which persons will be admitted to, and retain, membership in the cooperative, provided that, if expressly so stated, the determination of these matters may be reserved to the directors by the bylaws; and
- h. Other provisions, not inconsistent with law, which the incorporators or directors choose to insert for the regulation of the business and affairs of the cooperative.

C.48:24-5 Use of "Rural Electric Cooperative" designation restricted.

5. The words "Rural Electric Cooperative" shall not be used in the corporate name of any corporation organized for profit or not-for-profit in this State other than a cooperative existing under P.L.2017, c.297 (C.48:24-1 et al.).

C.48:24-6 Liberal construction.

6. All of the provisions of law applicable to rural electric cooperatives 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.

C.48:24-7 Powers of rural electric cooperative.

7. A rural electric cooperative existing under P.L.2017, c.297 (C.48:24-1 et al.) shall have the power:

- a. To generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of that electric energy to its members; and to construct, erect, purchase, lease as lessee and, in any manner, acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary, convenient, or useful;
- b. To assist its members to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of all kinds and character and, in connection therewith and for those purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of all kinds and character;
- c. To receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;
- d. To use any highway or any right-of-way, easement, or other similar property right owned or held by the State or any political subdivision thereof, in connection with the acquisition, construction, improvement, operation, or maintenance of its lines;

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

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

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

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

C.48:24-8 Power relative to bylaws.

8. The power to make, alter, or repeal the bylaws of a rural electric cooperative established pursuant to P.L.2017, c.297 (C.48:24-1 et al.) shall be vested in the board of directors of the cooperative. The bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles of incorporation.

C.48:24-9 Eligibility for membership.

9. All persons in rural areas served, or proposed to be served, by a rural electric cooperative shall be eligible for membership in the cooperative upon terms as the cooperative's bylaws may specify. The bylaws shall constitute a contract between the cooperative and each of its members.

C.48:24-10 Liability for, payment of debts.

10. A member shall not be liable for the debts of a rural electric cooperative, but nothing in P.L.2017, c.297 (C.48:24-1 et al.) shall be construed to relieve any member from the payment of any debt due by the member to the cooperative.

C.48:24-11 Certificate of membership.

11. When a member of a rural electric cooperative has paid a membership fee, submitted a membership application, and complied with all remaining requirements for membership as determined by the cooperative, a certificate of membership shall be issued to the member. Memberships in the cooperative and the certificates thereof shall be nontransferable. The certificate of membership shall be surrendered to the cooperative upon the resignation, expulsion, or death of the member.

C.48:24-12 Board of directors.

12. a. The business and affairs of a rural electric cooperative shall be managed under the direction of a board of not less than three directors who shall be natural persons of full age. All directors shall be members of the cooperative.

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

C.48:24-13 Meetings.

13. a. An annual meeting of the members of a rural electric cooperative shall be held at a time as may be provided in the bylaws.

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

(1) the president;

- (2) the board of directors;
- (3) the members as evidenced by a petition signed by not less than one-tenth of all of the members; or
- (4) other officers or persons as may be provided in the bylaws.

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

C.48:24-14 Quorum.

14. If the total number of members of a rural electric cooperative shall exceed 1,000, then at least 100 of the members present in person shall constitute a quorum for the transaction of business at all meetings of members. In the case of a joint membership, the presence at a meeting of either joint member or both shall be regarded as the presence of one member. If less than a quorum is present at any meeting, a majority of those members present in person may adjourn the meeting from time to time without further notice.

C.48:24-15 Voting.

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

C.48:24-16 Operating expenses; revenues.

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

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

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

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

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

C.48:24-17 Merger, consolidation, division.

17. a. Any two or more rural electric cooperatives may merge, consolidate, or divide, but only if the surviving or resulting entity is a rural electric cooperative existing under P.L.2017, c.297 (C.48:24-1 et al.) or under the laws of a neighboring state. Every merger, consolidation, or division of a cooperative shall be proposed by the adoption by the board of directors of a resolution approving the plan of merger, consolidation, or division and directing that the plan be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

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

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

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

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

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

C.48:24-18 Dissolution.

18. A rural electric cooperative may dissolve only when authorized by the affirmative vote of two-thirds of all the members of the cooperative. Any assets remaining after all liabilities or obligations of the cooperative have been satisfied or discharged upon dissolution shall be distributed pro rata among the members of the cooperative at the time of the filing of the certificate of dissolution in accordance with the cooperative's bylaws.

C.48:24-19 Security of borrowed money.

19. Whenever any rural electric cooperative subject to P.L.2017, c.297 (C.48:24-1 et al.) has borrowed money from any federal agency, the obligations issued to secure the payment of the money shall be exempt from the provisions of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.) nor shall the provisions of P.L.1967, c.93 (C.49:3-47 et seq.) apply to the issuance of membership certificates by that cooperative.

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

C.54:10A-3 Corporations exempt.

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

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

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

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

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

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

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

(g) Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under federal law by tenants, provided, however, that the exemption hereunder shall continue only so long as the corporations remain subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corporations and the corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat.1246) as amended by subsequent Acts of Congress. In order to be exempted under this subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of \$25;

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

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

(j) (1) Municipal electric corporations that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges, or deliveries of electricity derived from customers using electricity within their municipal boundaries; and (2) Municipal electric utilities that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges, or deliveries of electricity derived from customers using electricity within their franchise area existing as of January 1, 1995. If a municipal electric corporation

derives income from sales, exchanges, or deliveries of electricity from customers using the electricity outside its municipal boundaries, the municipal electric corporation shall be subject to the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.) on all income. If a municipal electric utility derives income from sales, exchanges or deliveries of electricity from customers using electricity outside its franchise area existing as of January 1, 1995, the municipal electric utility shall be subject to the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.) on all income; and

(k) A rural electric cooperative which is exclusively owned and controlled by the members it serves and is subject to the provisions of P.L.2017, c.297 (C.48:24-1 et al.), provided that all of the cooperative's income from the sale and distribution of electricity is derived from sales, exchanges, or deliveries of electricity to members using electricity within its franchise area. If a rural electric cooperative derives income from sales, exchanges, or deliveries of electricity from customers using electricity outside its franchise area, that rural electric cooperative shall be subject to the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.) on income derived from those sales, exchanges, or deliveries.

21. This act shall take effect immediately and section 20 shall first apply to accounting or privilege periods commencing after the date of enactment.

Approved January 16, 2018.