

CHAPTER 233

H.B. No. 572

AN ACT

relating to the operation of a telephone cooperative.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (6) and (7) and adding Subdivision (8) to read as follows:

(6) "*Communication service*" means the transmitting, receiving, or both, of information, signals, or messages by wire, radio, cellular radio, microwave, fiber optics, or

any other means, and includes the providing of lines, facilities, and systems used in providing the service [~~“Telephone service” means any communication service whereby voice communication through the use of electricity is the principal intended use thereof, and shall include all telephone lines, facilities or systems used in the rendition of such service~~].

(7) *“Commission” means the Public Utility Commission of Texas* [~~“Rural area” is defined to mean any area in this State which is located outside the boundaries of any incorporated or unincorporated city, town or village having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, or determined to have less than one thousand five hundred (1,500) inhabitants as provided by Subsection (4) of Section 4 of this Act~~].

(8) *“Patron” means a member of the corporation who is eligible to receive patronage dividends or to earn capital credits as a result of the purchase of certain services from the corporation, as provided by Section 11(b) of this Act.*

SECTION 2. Section 3, Telephone Cooperative Act (Article 1528c, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 3. PURPOSE. Cooperative, non-profit corporations may be organized under this Act for the purpose of furnishing *communication* [telephone] service [in rural areas] to the widest practicable number of users of such service[; ~~provided there shall be no duplication of service where reasonable adequate telephone service is available~~].

SECTION 3. Section 4, Telephone Cooperative Act (Article 1528c, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 4. POWERS OF CORPORATION. Each corporation shall have power:

- (1) To sue and be sued, complain and defend, in its corporate name;
- (2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
- (4) To furnish, improve and expand *communication* [telephone] service to its members, to governmental agencies and political subdivisions[; ~~and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation~~] through interconnection of facilities to any number of subscribers of other *communication* [telephone] systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing *communication* [telephone] facilities may continue service to persons[; ~~not in excess of forty per centum (40%) of the number of its members,~~] who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws[; ~~provided there shall be no duplication of services where reasonably adequate telephone services are available~~].
- (5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, *communication* [telephone] lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized[; ~~provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereun-~~

~~der unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4].~~

(6) To connect and interconnect its *communication* [telephone] lines, facilities or systems with other *communication* [telephone] lines, facilities or systems;

(7) To make its facilities available to persons furnishing *communication* [telephone] service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate *communication* [telephone] lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in *Chapter 228* [House Bill No. 393], Acts of the Fifty-first Legislature, Regular Session, 1949 (*Article 1436a, Vernon's Texas Civil Statutes*).

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating *communication* [telephone] lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

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

SECTION 4. The Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) is amended by adding Section 4A to read as follows:

Sec. 4A. POWER TO INDEMNIFY AND PURCHASE INDEMNITY INSURANCE; DUTY TO INDEMNIFY. Article 2.22A, Texas Non-Profit Corporation Act (Article 1396-2.22A, Vernon's Texas Civil Statutes), applies to a corporation formed under this Act in the same manner as if the corporation were formed under the Texas Non-Profit Corporation Act.

SECTION 5. Section 11, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. QUALIFICATION OF MEMBERS; PATRONS. (a) Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use *communication* [telephone] service furnished by the corporation when it is made available through its facilities. Membership in a corporation shall be evidenced by a certificate of membership which shall not be transferable,

except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership. Membership certificates shall contain such provisions, consistent with this Act and the articles of incorporation of the corporation, as shall be prescribed by its by-laws. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

(b) Each member who purchases local telecommunications service or toll telecommunications service, or pays end user access charges in the ordinary course of business of the corporation is a patron of the corporation. The use of interexchange access, payment of interexchange access fees or settlements, or the purchase of equipment does not qualify a member or other person as a patron.

SECTION 6. Section 14(a), Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The business of a corporation shall be managed by a board of not less than five (5) directors, each of whom shall be a member of the corporation. The by-laws shall prescribe the number of directors, their qualifications, other than those prescribed in this Act, the manner of holding meetings of the Board of Directors and of electing successors to directors who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as directors and, except in emergencies, shall not receive any salaries for their services in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the Board of Directors, committee meeting, industry-related conference approved by the Board of Directors, or training program, and may provide for reimbursement of actual expenses of attendance or a reasonable per diem. The corporation may provide liability, accident, life, and health insurance coverage for directors choosing to have that coverage.

SECTION 7. Section 20(b), Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all the powers of a corporation as originally organized hereunder. Provided that no consolidation shall be made for the purpose of duplicating the facilities of any other communication [telephone] company where such other communication [telephone] company is giving or is willing to give reasonable adequate communication [telephone] service.

SECTION 8. The Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) is amended by adding Sections 20A, 20B, 20C, and 20D to read as follows:

Sec. 20A. MERGER. (a) One (1) or more cooperatives may merge into another cooperative as provided by this section.

(b) The proposition for the merger and proposed articles of merger shall be submitted at a meeting of the members of each merging cooperative and the surviving cooperative. A copy of the proposed articles of merger must be attached to the notice of each meeting.

(c) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds (2/3) of the members of each cooperative voting on the proposed merger and articles, the articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its president or vice-president and attested by its secretary. The cooperative's seal shall be affixed to the articles of merger.

(d) The articles of merger must state:

(1) that they are executed under this Act;

(2) the name of each merging cooperative and the address of its principal office;

(3) *the name of the surviving cooperative and the address of its principal office;*
(4) *that each merging cooperative and the surviving cooperative agree to the merger;*

(5) *the names and addresses of the directors of the surviving cooperative;*

(6) *the terms and conditions of the merger and the manner in which the merger will be carried out, including the manner in which members and shareholders, if any, of the merging cooperatives become or may become members or shareholders of the surviving cooperative;*

(7) *the period of existence of the surviving cooperative; and*

(8) *the purpose for which the surviving cooperative is formed.*

(e) *The articles of merger may contain any provision not inconsistent with this Act considered necessary or advisable for the conduct of the business of the surviving cooperative. The president or vice-president of each cooperative executing the articles of merger shall make and attach to the articles an affidavit stating that the cooperative complied with this section in respect to the articles.*

(f) *The original and a copy of the articles of merger shall be delivered to the Secretary of State. If the Secretary of State finds that the articles conform to law, the Secretary of State, when all fees have been paid as provided by this Act, shall:*

(1) *file and record the articles of merger;*

(2) *issue a certificate of merger; and*

(3) *attach to the certificate of merger the copy of the articles of merger and deliver the certificate and attached copy to the surviving cooperative or its representative.*

Sec. 20B. EFFECT OF CONSOLIDATION OR MERGER. (a) In a consolidation the existence of each cooperative ceases and the articles of consolidation are considered to be the articles of incorporation of the new cooperative. In a merger the separate existence of each merging cooperative ceases and the articles of incorporation of the surviving cooperative are considered to be amended to the extent, if any, that amendment is provided for in the articles of merger.

(b) *All the rights, privileges, immunities, franchises, real and personal property, applications for membership, debts due on any account, and choses in action of each of the consolidating or merging cooperatives are transferred to and vested in the new or surviving cooperative, except that this Act does not relieve a cooperative of the obligation to comply with the applicable provisions of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).*

(c) *The new or surviving cooperative is responsible and liable for all the liabilities and obligations of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place. Neither the rights of creditors nor any liens on the property of any of the cooperatives are impaired by the consolidation or merger.*

Sec. 20C. CONVERSION OF CORPORATION INTO COOPERATIVE. (a) Any corporation organized under the laws of this state and furnishing or having the power to furnish communication service may be converted into a cooperative by complying with this section and on conversion becomes subject to this Act as if it had been originally organized under this Act.

(b) *The proposition for the conversion and proposed articles of conversion shall be submitted at a meeting of the members or stockholders of the corporation or, in case of a corporation having no members or stockholders, at a meeting of the incorporators of the corporation. A copy of the proposed articles of conversion must be attached to the notice of the meeting.*

(c) *Articles of conversion in the form approved shall be executed and acknowledged on behalf of the corporation by its president or vice-president and attested by its secretary and the corporation's seal shall be affixed to the articles if:*

(1) *the proposed conversion and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds (2/3) of the members of the corporation voting on the proposed conversion and articles;*

(2) *if the corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds (2/3) of the shares of the capital stock of the corporation represented at the meeting and voting on the proposition and articles; or*

(3) *in the case of a corporation having no members and no shares of its capital stock outstanding, by the affirmative vote of not less than two-thirds (2/3) of its incorporators.*

(d) *The articles of conversion must state:*

(1) *that they are executed under this Act;*

(2) *the name of the corporation and the address of its principal office before its conversion into a cooperative;*

(3) *the law under which it was organized;*

(4) *a statement that the corporation elects to become a cooperative, nonprofit corporation subject to this Act;*

(5) *its name as a cooperative;*

(6) *the address of the principal office of the cooperative;*

(7) *the names and addresses of the directors of the cooperative;*

(8) *the manner in which members, stockholders, or incorporators of the corporation become or may become members of the cooperative;*

(9) *the period of existence of the cooperative; and*

(10) *the purpose for which the cooperative is formed.*

(e) *The articles of conversion may contain any provision not inconsistent with this Act considered necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing the articles of conversion shall make and attach to the articles an affidavit stating that this section was duly complied with in respect to the articles. The articles of conversion are considered to be the articles of incorporation of the cooperative.*

(f) *The original and a copy of the articles of conversion shall be delivered to the Secretary of State. If the Secretary of State finds that the articles conform to law, the Secretary of State, when all fees have been paid as provided by this Act, shall:*

(1) *file and record the articles of conversion;*

(2) *issue a certificate of conversion; and*

(3) *attach to the certificate of conversion the copy of the articles of conversion and deliver the certificate and attached copy to the cooperative or its representative.*

Sec. 20D. CONSOLIDATION AND CONVERSION OF CORPORATIONS INTO A COOPERATIVE. (a) *Two or more corporations organized under the laws of this state and furnishing or having the corporate power to furnish communication service may, if otherwise permitted to consolidate by the laws of this state, consolidate and convert into a cooperative subject to this Act, with the same effect as if originally organized under this Act, by complying with this section.*

(b) *The proposition for the consolidation and conversion and the proposed articles of consolidation and conversion, with any amendments, must be approved by each corporation in accordance with the law under which it was organized and Section 20C of this Act.*

(c) *The articles of consolidation and conversion in the form approved shall be executed, acknowledged, and sealed as prescribed by Section 20C of this Act and by the law under which the consolidating and converting corporations were organized. The articles of consolidation and conversion must state that they are executed under this Act and the law under which the corporations were organized and that each consolidating corporation elects that the new corporation be a cooperative. In addition the articles of consolidation and conversion must contain all other information required*

by the law under which the corporations were organized and may contain any provision not inconsistent with this Act considered necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing the articles of consolidation and conversion shall make and attach to them an affidavit stating that the provision of this section and of the law under which the consolidating corporations were organized were duly complied with in respect to the articles. The articles of consolidation and conversion are considered to be the articles of incorporation of the cooperative and shall be filed in accordance with the provisions both of this Act and of the law under which the consolidating corporations were organized.

(d) The original and a copy of the articles of consolidation and conversion shall be delivered to the Secretary of State. If the Secretary of State finds that the articles conform to law, the Secretary of State, when all fees have been paid as provided by this Act, shall:

- (1) file and record the articles of consolidation and conversion;
- (2) issue a certificate of consolidation and conversion; and
- (3) attach to the certificate of consolidation and conversion the copy of the articles of consolidation and conversion and deliver the certificate and attached copy to the cooperative or its representative.

SECTION 9. Section 21(a), Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any corporation may be dissolved by a *two-thirds (2/3)* [~~majority~~] vote of all the members of the corporation. The vote must be taken at a [~~at any~~] regular meeting, or at any special meeting of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person [~~or by proxy~~] by a *two-thirds (2/3)* vote [~~majority~~] of all the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

SECTION 10. Section 23, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. DISPOSITION OF PROPERTY. (a) The Board of Directors of a corporation shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of the corporation to the United States of America, [~~or~~] any agency or instrumentality thereof, or any lending institution licensed by the federal government or a state. Any such mortgage or mortgages or deed or deeds of trust shall be exempt from mortgages recordation tax.

(b) A corporation may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a *major* [~~substantial~~] portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds (2/3) of all the members of the corporation; provided, however, that notwithstanding any other provision of this Act, or any other provision of law, the Board of Directors may, upon the authorization of *two-thirds (2/3)* [~~a majority~~] of all the [~~those~~] members of the corporation [~~present~~] at a meeting of the members thereof, the notice of which shall have set forth the proposed action, sell, lease or otherwise dispose of all or a *major* [~~substantial~~] portion of its property to another corporation or a foreign corporation doing business in this State pursuant to this Act or to the holder or holders of any notes, bonds or other evidences of indebtedness issued to the United States of America, [~~or~~] any

agency or instrumentality thereof, or any lending institution licensed by the federal government or a state.

SECTION 11. Section 26, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. CONSTRUCTION STANDARDS. Construction of *communication* [telephone] lines and facilities by a corporation shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of such construction.

SECTION 12. Section 28, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 28. FEES. The Secretary of State shall charge and collect for:

- (a) Filing articles of incorporation, *Twenty-Five Dollars (\$25)* [~~Ten Dollars (\$10)~~];
- (b) Filing articles of amendment, *Twenty-Five Dollars (\$25)* [~~Two Dollars and Fifty Cents (\$2.50)~~];
- (c) Filing articles of consolidation, *merger, conversion, or consolidation and conversion, Fifty Dollars (\$50)* [~~Ten Dollars (\$10)~~];
- (d) Filing certificate of election to dissolve, *Five Dollars (\$5)* [~~Two Dollars and Fifty Cents (\$2.50)~~];
- (e) Filing articles of dissolution, *Five Dollars (\$5)* [~~Two Dollars and Fifty Cents (\$2.50)~~];
- (f) Filing certificate of change of principal office, *Five Dollars (\$5)* [~~Two Dollars and Fifty Cents (\$2.50)~~].

SECTION 13. Section 30, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. CONNECTION AND INTERCONNECTION OF FACILITIES. Any corporation doing business in this State pursuant to this Act (such corporation being designated in this section as "applicant") shall have the right to require any person furnishing *communication* [telephone] service to the public in this State (such person being designated in this section as "company") to interconnect the company's lines, facilities or systems with, or otherwise make available such lines, facilities or systems to, the applicant's *communication* [telephone] lines, facilities or systems, in order to provide a continuous line of communication for the applicant's subscribers. The provisions of Articles 1426, 1427, 1430, 1431, and 1432 of the Revised Civil Statutes of Texas of 1925 may be enforced by or against any corporation created by virtue of this Act.

SECTION 14. Section 33, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 33. ACT EXTENDED TO EXISTING CORPORATIONS. Any existing cooperative or non-profit corporation or association, organized under any other law of this State, for the purpose of engaging in furnishing *communication* [rural telephone] service, may, by a majority vote of the members present in person [or by proxy] at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

SECTION 15. This Act takes effect September 1, 1987.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 29, 1987, by a non-record vote. Passed by the Senate on May 14, 1987, by a viva-voce vote.

Approved May 28, 1987.

Effective Sept. 1, 1987.