

HOUSE BILL 999

C5, C1

0lr1757
CF SB 540

By: **Delegates Sample–Hughes, Adams, Anderton, Arentz, Ghrist, Griffith, Hartman, Hornberger, Jacobs, Mautz, McKay, Otto, and Reilly**

Introduced and read first time: February 5, 2020

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2020

CHAPTER _____

1 AN ACT concerning

2 **Member–Regulated Cooperatives – Establishment**
3 **(Rural Broadband for the Eastern Shore Act of 2020)**

4 FOR the purpose of establishing a process for an electric cooperative to operate as a
5 member–regulated cooperative in a certain area; specifying that the Public Service
6 Commission does not have jurisdiction over a member–regulated cooperative, subject
7 to certain exceptions; prohibiting a member–regulated cooperative from exercising a
8 certain power of condemnation for the sole purpose of providing broadband Internet
9 service; specifying certain provisions of law that apply to a member–regulated
10 cooperative; requiring a member–regulated cooperative to make certain information
11 available to its members; prohibiting a member–regulated cooperative from adopting
12 a new rate or changes to its rates or certain charges unless the member–regulated
13 cooperative provides certain notice and opportunities to its members; requiring a
14 member–regulated cooperative to implement a certain net metering program;
15 requiring a member–regulated cooperative to adopt certain procedures for handling
16 complaints from its members; prohibiting a member–regulated cooperative from
17 requiring a member to use a certain complaint process; authorizing a member to take
18 certain actions if the member uses a certain complaint process; stating that a
19 decision made under a certain complaint process is binding on the
20 member–regulated cooperative; requiring a member–regulated cooperative to
21 establish certain policies regarding termination of service; authorizing the board of
22 directors to amend certain policies regarding termination of service; prohibiting a
23 member–regulated cooperative from denying access to certain facilities subject to a
24 certain exception; requiring a member–regulated cooperative to charge a reasonable

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



rate for access to certain facilities subject to a certain prohibition; authorizing certain entities to file a complaint with the Commission regarding certain rates, terms, and conditions; requiring that the Commission hear and resolve a certain complaint in a certain manner; establishing a process for a member–regulated cooperative to revert to a cooperative; stating that the Commission has jurisdiction over a member–regulated cooperative that has elected to revert to a cooperative on issuance of a certain order; requiring the Commission to issue a certain order within a certain period of time; stating that the provisions of this Act prevail if there is a certain conflict; defining certain terms; making conforming changes; declaring the intent of the General Assembly; and generally relating to electric cooperatives and member–regulated cooperatives.

BY renumbering

Article – Corporations and Associations

Section 5–635 through 5–642, respectively, and the part “Part VI. Miscellaneous Provisions”

to be Section ~~5–645~~ 5–646 through ~~5–652~~ 5–653, respectively, and the part “Part VII. Miscellaneous Provisions”

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Utilities

Section 2–112(a)

Annotated Code of Maryland

(2010 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section 5–601 and 5–632(b)

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

BY adding to

Article – Corporations and Associations

Section 5–635 through ~~5–642~~ 5–643 to be under the new part “Part VI. Member–Regulated Cooperatives”

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section ~~5–646(b)~~ 5–647(b)

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

(As enacted by Section 1 of this Act)

Preamble

WHEREAS, In 1938, 184 rural residents joined together under the Rural Electrification Act to form Choptank Electric Cooperative, an electric cooperative that would bring electricity to their homes and farms because for-profit electric companies would not; and

WHEREAS, Today, Choptank Electric Cooperative delivers reliable and cost-effective electricity that improves the quality of life to 54,150 members in nine counties on Maryland's Eastern Shore; and

WHEREAS, Choptank Electric Cooperative is owned by its members, not shareholders; and

WHEREAS, Choptank Electric Cooperative owns 650 miles of existing middle-mile communications fiber; and

WHEREAS, Choptank Electric Cooperative is governed by a board of directors who are members of the cooperative and are democratically elected by their fellow members; and

WHEREAS, Choptank Electric Cooperative members want to bring high-speed fiber Internet service to their homes, farms, and rural businesses to attain the standard of connectivity with the world that is enjoyed by their neighbors in Maryland's more urban areas; and

WHEREAS, Despite numerous studies and significant financial investment, the delivery of universal broadband Internet service to the rural residents on Maryland's Eastern Shore has still not occurred; and

WHEREAS, Current statutory and regulatory restrictions prevent the members of Choptank Electric Cooperative from using their economies-of-scale to deliver broadband Internet service quickly and efficiently to their homes; and

WHEREAS, The Rural Broadband for the Eastern Shore Act of 2020 will empower the members of Choptank Electric Cooperative to regulate themselves and provide economically efficient broadband Internet service; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5-635 through 5-642, respectively, and the part "Part VI. Miscellaneous Provisions" of Article – Corporations and Associations of the Annotated Code of Maryland be renumbered to be Section(s) ~~5-645~~ 5-646 through ~~5-652~~ 5-653, respectively, and the part "Part VII. Miscellaneous Provisions".

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Utilities

2–112.

(a) (1) [To] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, TO the full extent that the Constitution and laws of the United States allow, the Commission has jurisdiction over each public service company that engages in or operates a utility business in the State and over motor carrier companies as provided in Title 9 of this article.

(2) EXCEPT AS PROVIDED IN TITLE 5, SUBTITLE 6, PART VI OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, THE COMMISSION DOES NOT HAVE JURISDICTION OVER A MEMBER–REGULATED COOPERATIVE AS DEFINED IN § 5–601 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

Article – Corporations and Associations

5–601.

(a) In this subtitle the following words have the meanings indicated.

(b) “COMMISSION” MEANS THE PUBLIC SERVICE COMMISSION.

(c) “Cooperative” means a corporation that:

(1) Is organized under this subtitle; or

(2) Becomes subject to this subtitle in the manner provided in this subtitle.

[(c)] (D) “Electric plant” means the material, equipment, and property owned by a cooperative and used or to be used for or in connection with electric service.

[(d)] (E) “Member” means a person or household that has been qualified and accepted for membership in a cooperative in accordance with its bylaws.

(F) “MEMBER–REGULATED COOPERATIVE” MEANS A COOPERATIVE:

(1) THAT PROVIDES RETAIL ELECTRIC SERVICE TO ITS MEMBERS ON THE EASTERN SHORE OF MARYLAND; AND

(2) WHOSE BOARD OF DIRECTORS HAS PASSED A BINDING RESOLUTION TO OPERATE AS A MEMBER–REGULATED COOPERATIVE.

[(e)] (G) (1) “Person” has the meaning stated in § 1–101 of this article.

(2) “Person” includes:

(i) The State;

(ii) A county, municipal corporation, or other political subdivision of the State; and

(iii) A unit of federal, State, or local government.

5-632.

(b) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A proposed dissolution shall be approved by the affirmative vote of not less than two-thirds of the members voting on the matter at an annual or special meeting of the members.

(2) A PROPOSED DISSOLUTION OF A MEMBER-REGULATED COOPERATIVE SHALL BE APPROVED BY THE AFFIRMATIVE VOTE OF NOT LESS THAN TWO-THIRDS OF THE MEMBERS.

PART VI. MEMBER-REGULATED COOPERATIVES.

5-635.

(A) TO OPERATE AS A MEMBER-REGULATED COOPERATIVE, A COOPERATIVE SHALL PASS, BY UNANIMOUS VOTE OF ITS BOARD OF DIRECTORS, A BINDING RESOLUTION TO OPERATE AS A MEMBER-REGULATED COOPERATIVE.

(B) WITHIN 10 DAYS AFTER THE PASSAGE OF A BINDING RESOLUTION UNDER SUBSECTION (A) OF THIS SECTION, THE COOPERATIVE SHALL FILE A DECLARATION WITH THE COMMISSION STATING THAT IT HAS ELECTED TO OPERATE AS A MEMBER-REGULATED COOPERATIVE.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 180 DAYS AFTER FILING A DECLARATION UNDER SUBSECTION (B) OF THIS SECTION, THE COOPERATIVE'S BOARD OF DIRECTORS, BY A SUPERMAJORITY VOTE, SHALL:

(I) ADOPT BYLAWS FOR THE MEMBER-REGULATED COOPERATIVE; AND

(II) AMEND THE COOPERATIVE'S ARTICLES OF INCORPORATION TO REFLECT THE COOPERATIVE'S CONVERSION TO BEING A MEMBER-REGULATED COOPERATIVE.

(2) THE BYLAWS AND AMENDED ARTICLES OF INCORPORATION SHALL:

(I) AUTHORIZE THE MEMBER-REGULATED COOPERATIVE TO PROVIDE BROADBAND INTERNET SERVICE; AND

(II) EXCEPT AS PROVIDED IN § 5-636(A)(2) OF THIS SUBTITLE, BE CONSISTENT WITH THIS SUBTITLE.

5-636.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE APPLIES TO THE PROVISION OF BROADBAND INTERNET SERVICE BY A MEMBER-REGULATED COOPERATIVE.

(2) A MEMBER-REGULATED COOPERATIVE MAY NOT, FOR THE SOLE PURPOSE OF PROVIDING BROADBAND INTERNET SERVICE, EXERCISE THE POWER OF CONDEMNATION UNDER § 5-607(A)(16) OF THIS SUBTITLE.

(B) A MEMBER-REGULATED COOPERATIVE IS SUBJECT TO THE FOLLOWING PROVISIONS OF THE PUBLIC UTILITIES ARTICLE:

(1) § 5-103;

(2) § 5-201;

(3) § 5-202;

(4) § 5-303;

(5) § 5-304;

(6) § 7-103;

(7) § 7-104;

(8) § 7-203;

(9) § 7-207;

(10) § 7-302;

(11) TITLE 7, SUBTITLE 5, PART I AND PART II;

(12) TITLE 7, SUBTITLE 7; AND

(13) § 13-101.

1 **5-637.**

2 (A) A MEMBER-REGULATED COOPERATIVE SHALL MAKE AVAILABLE TO ITS
3 MEMBERS:

4 (1) RATE SCHEDULES, TARIFFS, AND TERMS AND CONDITIONS OF
5 SERVICE;

6 (2) FINANCIAL AND STATISTICAL INFORMATION REGARDING:

7 (I) OPERATING REVENUES;

8 (II) REVENUES PER RATE CLASS;

9 (III) NUMBER OF MEMBERS PER RATE CLASS; AND

10 (IV) NUMBER OF METERS PER RATE CLASS;

11 (3) DATA AND INFORMATION CONCERNING LOAD MANAGEMENT,
12 ENERGY CONSERVATION, AND OTHER SIMILAR PROGRAMS;

13 (4) INFORMATION CONCERNING ONGOING CONSUMER EDUCATION
14 PROGRAMS; AND

15 (5) INFORMATION CONCERNING THE MEMBER-REGULATED
16 COOPERATIVE'S PERFORMANCE, INCLUDING INCOME STATEMENTS, BALANCE
17 SHEETS, AND RELIABILITY DATA.

18 (B) A MEMBER-REGULATED COOPERATIVE MAY NOT ADOPT A NEW RATE OR
19 INCREASE OR DECREASE ITS RATES OR CHARGES FOR THE SERVICES IT PROVIDES
20 UNLESS THE MEMBER-REGULATED COOPERATIVE PROVIDES TO ITS MEMBERS:

21 (1) NOTICE OF THE PROPOSED RATES;

22 (2) THE OPPORTUNITY TO COMMENT ON THE PROPOSED RATES; AND

23 (3) THE OPPORTUNITY TO OBSERVE THE PORTION OF THE MEETING
24 IN WHICH THE BOARD OF DIRECTORS VOTES ON THE PROPOSED RATES.

25 **5-638.**

26 A MEMBER-REGULATED COOPERATIVE SHALL:

(1) IMPLEMENT A NET METERING PROGRAM THAT IS CONSISTENT WITH § 7-306 OF THE PUBLIC UTILITIES ARTICLE; AND

(2) USE THE PROCESS ESTABLISHED UNDER § 5-639 OF THIS SUBTITLE TO RESOLVE COMPLAINTS RELATED TO NET METERING.

5-639.

(A) A MEMBER-REGULATED COOPERATIVE SHALL ADOPT PROCEDURES TO HEAR, DECIDE, AND RESOLVE, IN A PROMPT AND FAIR MANNER, COMPLAINTS FROM ITS MEMBERS, INCLUDING COMPLAINTS REGARDING NET METERING.

(B) (1) THE PROCEDURES ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL PROVIDE FOR A FORMAL AND AN INFORMAL COMPLAINT PROCESS.

(2) A FORMAL COMPLAINT PROCEEDING SHALL INCLUDE, AT A MINIMUM:

(I) THE RIGHT TO PRESENT A COMPLAINT IN WRITING;

(II) THE RIGHT TO HAVE A COMPLAINT HEARD BY THE CHIEF EXECUTIVE OFFICER OF THE MEMBER-REGULATED COOPERATIVE, OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE;

(III) THE RIGHT TO A WRITTEN RESPONSE THAT STATES THE REASONS FOR THE MEMBER-REGULATED COOPERATIVE'S DECISION; AND

(IV) THE RIGHT TO HAVE THE COMPLAINT AND RESPONSE REVIEWED BY THE BOARD OF DIRECTORS.

(C) (1) A MEMBER-REGULATED COOPERATIVE MAY NOT REQUIRE A MEMBER TO USE THE FORMAL OR INFORMAL COMPLAINT PROCESS.

(2) IF A MEMBER USES THE FORMAL OR INFORMAL COMPLAINT PROCESS, THE MEMBER MAY:

(I) ACCEPT THE DECISION RESULTING FROM THE PROCESS; OR

(II) REJECT THE DECISION RESULTING FROM THE PROCESS AND PURSUE ANY OTHER REMEDY AUTHORIZED BY LAW.

(D) A DECISION MADE UNDER A FORMAL OR INFORMAL COMPLAINT PROCESS IS BINDING ON THE MEMBER-REGULATED COOPERATIVE.

1 5-640.

2 (A) A MEMBER-REGULATED COOPERATIVE SHALL ESTABLISH POLICIES
3 REGARDING TERMINATION OF SERVICE, INCLUDING TERMINATION OF SERVICE:

4 (1) TO LOW-INCOME MEMBERS;

5 (2) TO A MEMBER IN COLD WEATHER; AND

6 (3) TO A MEMBER IN HOT WEATHER.

7 (B) THE BOARD OF DIRECTORS MAY, AS NECESSARY, AMEND THE POLICIES
8 REGARDING TERMINATION OF SERVICE.

9 5-641.

10 (A) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS
11 SUBSECTION, A MEMBER-REGULATED COOPERATIVE MAY NOT PROHIBIT A
12 TELECOMMUNICATIONS OR CABLE SERVICE PROVIDER FROM ACCESSING A POLE,
13 DUCT, CONDUIT, RIGHT-OF-WAY, OR SIMILAR FACILITY OWNED OR CONTROLLED, IN
14 WHOLE OR IN PART, BY THE MEMBER-REGULATED COOPERATIVE.

15 (2) A MEMBER-REGULATED COOPERATIVE MAY DENY ACCESS TO A
16 FACILITY SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

17 (I) ON A NONDISCRIMINATORY BASIS; AND

18 (II) IF THE MEMBER-REGULATED COOPERATIVE DETERMINES
19 THAT:

20 1. THE FACILITY DOES NOT HAVE SUFFICIENT CAPACITY
21 TO ALLOW ACCESS; OR

22 2. ALLOWING ACCESS WOULD CREATE SAFETY,
23 RELIABILITY, OR ENGINEERING CONCERNS.

24 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A
25 MEMBER-REGULATED COOPERATIVE SHALL CHARGE A REASONABLE RATE FOR
26 ACCESS TO A FACILITY SPECIFIED UNDER SUBSECTION (A)(1) OF THIS SECTION.

27 (2) A MEMBER-REGULATED COOPERATIVE MAY NOT CHARGE A RATE
28 FOR ACCESS TO A FACILITY SPECIFIED UNDER SUBSECTION (A)(1) OF THIS SECTION
29 THAT IS MORE THAN THE RATES CHARGED FOR ACCESS BY A LOCAL EXCHANGE

CARRIER, ELECTRIC COMPANY, WATER COMPANY, OR OTHER UTILITY OPERATING
IN THE MEMBER-REGULATED COOPERATIVE'S SERVICE AREA.

(3) (I) A CABLE OPERATOR, TELECOMMUNICATIONS CARRIER, OR
OTHER ENTITY AUTHORIZED TO ACCESS A FACILITY SPECIFIED UNDER SUBSECTION
(A)(1) OF THIS SECTION BY A MEMBER-REGULATED COOPERATIVE MAY FILE A
COMPLAINT WITH THE COMMISSION REGARDING THE MEMBER-REGULATED
COOPERATIVE'S RATES, TERMS, AND CONDITIONS FOR ACCESS.

(II) THE COMMISSION SHALL HEAR AND RESOLVE A
COMPLAINT FILED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN
ACCORDANCE WITH 47 U.S.C. § 224 AND 47 C.F.R. §§ 1.1401 THROUGH 1.1415,
INCLUSIVE.

5-642.

(A) (1) A MEMBER-REGULATED COOPERATIVE SHALL HOLD AN
ELECTION TO REVERT TO A COOPERATIVE ON:

(I) A SUPERMAJORITY VOTE OF THE BOARD OF DIRECTORS; OR

(II) RECEIPT BY THE BOARD OF DIRECTORS OF A PETITION
SIGNED BY AT LEAST 1,000 MEMBERS.

(2) A MEMBER-REGULATED COOPERATIVE MAY HOLD AN ELECTION
TO REVERT TO A COOPERATIVE ONLY ONCE EVERY 12 MONTHS.

(B) (1) A MEMBER-REGULATED COOPERATIVE SHALL REVERT TO A
COOPERATIVE ON THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS.

(2) WITHIN 5 DAYS AFTER AN AFFIRMATIVE VOTE TO REVERT TO A
COOPERATIVE, THE MEMBER-REGULATED COOPERATIVE SHALL FILE A
DECLARATION WITH THE COMMISSION STATING THAT IT HAS REVERTED TO A
COOPERATIVE.

(C) (1) THE COMMISSION SHALL HAVE JURISDICTION OVER A
MEMBER-REGULATED COOPERATIVE THAT HAS ELECTED TO REVERT TO A
COOPERATIVE ON ISSUANCE OF AN ORDER BY THE COMMISSION.

(2) THE COMMISSION SHALL ISSUE THE ORDER UNDER PARAGRAPH
(1) OF THIS SUBSECTION WITHIN 180 DAYS AFTER THE FILING OF A DECLARATION
UNDER SUBSECTION (B)(2) OF THIS SECTION.

~~5-642.~~ 5-643.

1 IF THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THIS PART AND OTHER
2 PROVISIONS OF LAW, THE PROVISIONS OF THIS PART SHALL PREVAIL.

3 ~~5-643.~~ 5-644. RESERVED.

4 ~~5-644.~~ 5-645. RESERVED.

5 ~~5-646.~~ 5-647.

6 (b) On payment of the fees provided for in [§ 5-637] ~~§ 5-647~~ § 5-648 of this
7 subtitle, the Department shall accept for record any articles or certificate filed with the
8 Department under this section if the Department finds that the articles or certificate
9 conform to the requirements of this subtitle.

10 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General
11 Assembly that, during the 2028 legislative session, the General Assembly shall deliberate
12 and determine whether the provisions of this Act shall be terminated and of no further force
13 and effect. If the General Assembly does not take any action to terminate this Act, the
14 provisions of this Act shall continue to be in full force and effect.

15 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.