

Chapter 277

(Senate Bill 634)

AN ACT concerning

Electric Cooperatives – Powers – Conducting or Communications Facilities

FOR the purpose of authorizing an electric cooperative to construct, maintain, or operate or allow others to construct, maintain, or operate certain conducting or communications facilities along, on, under, or across certain property under certain circumstances; requiring an electric cooperative to allocate certain costs in a certain manner and for a certain purpose; requiring an electric cooperative to give certain notice to certain property owners at least a certain amount of time before constructing certain facilities in a certain electric easement or making capacity available for certain services in the electric easement; providing for the contents of a certain notice; providing for the application of this Act; defining a certain term; and generally relating to the powers of electric cooperatives.

BY repealing and reenacting, with amendments,
 Article – Corporations and Associations
 Section 5–607
 Annotated Code of Maryland
 (2014 Replacement Volume and 2018 Supplement)

BY adding to
Article – Corporations and Associations
Section 5–641.1
Annotated Code of Maryland
(2014 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Corporations and Associations

5–607.

- (a) A cooperative has the power to:
- (1) Sue and be sued in its corporate name;
 - (2) Have perpetual existence;
 - (3) Adopt and alter a corporate seal;

- (4) Generate, manufacture, purchase, acquire, accumulate, and transmit electricity;
- (5) Distribute, sell, supply, and dispose of electricity to:
- (i) Its members;
 - (ii) Governmental agencies and political subdivisions; and
 - (iii) Other persons not exceeding 10% of the number of its members;
- (6) Assist persons to whom the cooperative supplies or will supply electricity in wiring their premises by:
- (i) Providing financing or other assistance; or
 - (ii) Wiring or causing the premises to be wired;
- (7) Assist persons to whom the cooperative supplies or will supply electricity in acquiring and installing electrical and plumbing appliances, equipment, fixtures, and apparatus by:
- (i) Providing financing or other assistance;
 - (ii) Wiring or causing the premises to be wired; or
 - (iii) Purchasing, acquiring, leasing as lessor or lessee, selling, distributing, installing, and repairing electrical and plumbing appliances, equipment, fixtures, and apparatus;
- (8) Assist persons to whom the cooperative supplies or will supply electricity in constructing, equipping, maintaining, and operating electric cold storage or processing plants, by providing financing or other assistance;
- (9) Construct, purchase, lease as lessee, or otherwise acquire electric transmission and distribution lines or systems, electric generating plants, electric cold storage or processing plants, electric plants, and any other assets considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;
- (10) Equip, maintain, and operate electric transmission and distribution lines or systems, electric generating plants, electric cold storage or processing plants, electric plants, and any other assets considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(11) Sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric cold storage or processing plants, electric plants, and any other assets considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(12) CONSTRUCT, MAINTAIN, OR OPERATE OR ALLOW OTHERS TO CONSTRUCT, MAINTAIN, OR OPERATE CONDUCTING OR COMMUNICATIONS FACILITIES THAT FURNISH TELECOMMUNICATIONS, BROADBAND INTERNET ACCESS, OR RELATED SERVICES, ALONG, ON, UNDER, OR ACROSS:

(I) REAL PROPERTY, PERSONAL PROPERTY, RIGHTS-OF-WAY, AND EASEMENTS OWNED, HELD, OR OTHERWISE USED BY THE COOPERATIVE; AND

(II) PUBLICLY OWNED LANDS, ROADWAYS, AND PUBLIC WAYS, WITH THE PRIOR CONSENT OF THE GOVERNING BODY OF THE MUNICIPAL CORPORATION OR COUNTY IN WHICH THE FACILITIES ARE PROPOSED TO BE CONSTRUCTED AND UNDER ANY REASONABLE REGULATIONS AND CONDITIONS IMPOSED BY THE GOVERNING BODY OF THE MUNICIPAL CORPORATION OR COUNTY;

[(12)] **(13)** Purchase, lease as lessee, or otherwise acquire, use and exercise, and sell, assign, convey, mortgage, pledge, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, and easements;

[(13)] **(14)** Borrow money and otherwise contract indebtedness, issue notes, bonds, and other evidences of indebtedness, and secure the payment of those instruments by mortgage, pledge, or deed of trust, or any other encumbrance on any of its assets, revenues, or income;

[(14)] **(15)** Construct, maintain, and operate electric transmission and distribution lines along, on, under, and across publicly owned lands, roadways, and public ways, with the prior consent of the governing body of the municipal corporation or county in which the lines are proposed to be constructed and under any reasonable regulations and conditions required in the consent;

[(15)] **(16)** Exercise the power of condemnation in the manner provided by the law of this State for the exercise of that power by other corporations that construct or operate electric transmission and distribution lines or systems;

[(16)] **(17)** Become a member of or own stock in other cooperatives or corporations;

[(17)] **(18)** Conduct its business and exercise its powers in any state, territory, district, and possession of the United States and in any foreign country;

~~[(18)]~~ **(19)** Adopt, amend, and repeal bylaws; and

~~[(19)]~~ **(20)** Do any other act and exercise any other power that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

(b) A cooperative that furnishes electric cold storage or processing plant service is not considered to be distributing, selling, supplying, or disposing of electricity under subsection (a)(5)(iii) of this section solely on that account.

(C) TO ENSURE THAT ELECTRIC CUSTOMERS DO NOT SUBSIDIZE THE COST OF BROADBAND SERVICES, AN ELECTRIC COOPERATIVE SHALL ALLOCATE PROPERLY ALL COSTS INCURRED UNDER SUBSECTION (A)(12) OF THIS SECTION BETWEEN ELECTRICITY-RELATED SERVICES AND BROADBAND SERVICES.

5-641.1.

(A) IN THIS SECTION, “ELECTRIC EASEMENT” MEANS AN EASEMENT HELD BY A COOPERATIVE FOR THE SITING OF ELECTRIC FACILITIES, REGARDLESS OF WHETHER THE EASEMENT IS FOR THE EXCLUSIVE BENEFIT OF THE COOPERATIVE OR FOR USE BY OTHER UTILITY COMPANIES.

(B) THIS SECTION APPLIES ONLY TO A COOPERATIVE IN THE EXERCISE OF ITS AUTHORITY UNDER § 5-607(A)(12) OF THIS SUBTITLE TO CONSTRUCT, MAINTAIN, OR OPERATE CONDUCTING OR COMMUNICATIONS FACILITIES WITHIN AN ELECTRIC EASEMENT THAT DOES NOT EXPRESSLY PROVIDE FOR THE CONSTRUCTION, MAINTENANCE, OR OPERATION OF CONDUCTING OR COMMUNICATIONS FACILITIES WITHIN THE EASEMENT.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A COOPERATIVE SHALL GIVE NOTICE TO EACH OWNER OF PROPERTY SUBJECT TO AN ELECTRIC EASEMENT AT LEAST 60 DAYS BEFORE THE COOPERATIVE:

(I) CONSTRUCTS CONDUCTING OR COMMUNICATIONS FACILITIES WITHIN THE EASEMENT; OR

(II) MAKES CAPACITY AVAILABLE FOR TELECOMMUNICATIONS, BROADBAND INTERNET ACCESS, OR RELATED SERVICES WITHIN THE ELECTRIC EASEMENT.

(2) THE COOPERATIVE SHALL GIVE THE NOTICE REQUIRED UNDER THIS SUBSECTION BY:

(I) POSTING NOTICE ON THE COOPERATIVE’S WEBSITE; AND

(II) INCLUDING THE NOTICE WITH BILLING INFORMATION SUCH AS A BILL INSERT OR BILL MESSAGE.

(3) THE COOPERATIVE SHALL GIVE THE NOTICE REQUIRED UNDER THIS SECTION AT THE NEXT FOLLOWING ANNUAL MEMBER MEETING OF THE COOPERATIVE AFTER THE NOTICE HAS BEEN GIVEN UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) THE NOTICE SHALL CONTAIN:

(I) A STATEMENT INDICATING THE COOPERATIVE’S INTENT TO USE THE ELECTRIC EASEMENT BY:

1. CONSTRUCTING NEW CONDUCTING OR COMMUNICATIONS FACILITIES; OR

2. MAKING CAPACITY AVAILABLE FOR TELECOMMUNICATIONS, BROADBAND INTERNET ACCESS, OR RELATED SERVICES THROUGH EXISTING FACILITIES; AND

(II) A WRITTEN PLAN FOR MAKING BROADBAND INTERNET SERVICE AVAILABLE WITHIN THE COOPERATIVE’S SERVICE TERRITORY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all real property, rights-of-way, and easements held by an electric cooperative on and after the effective date of this Act.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 30, 2019.