

---

By: **Delegate Cardin**

Introduced and read first time: June 14, 2006

Assigned to: Rules and Executive Nominations

---

A BILL ENTITLED

1 AN ACT concerning

2 **EmPOWER Marylanders Act of 2006**

3 FOR the purpose of creating the EmPOWER Maryland Buying Group as a nonprofit  
4 quasi-public corporation to act as an aggregator and negotiate low-cost electric  
5 and energy services for individuals and businesses; specifying the intent of the  
6 General Assembly that certain funds be used for initial start-up costs and that  
7 the EmPOWER Maryland Buying Group become fiscally self-sustaining;  
8 requiring the EmPOWER Maryland Buying Group to meet certain licensing  
9 provisions; establishing a Board of Directors for the EmPOWER Maryland  
10 Buying Group; providing for the appointment, terms, and reimbursement of  
11 expenses of the Board members; requiring the Board to appoint an Executive  
12 Director that will serve at the pleasure of the Board and to determine  
13 appropriate compensation in a certain manner; authorizing the Executive  
14 Director, under the direction of the Board, to hire employees and enter into  
15 certain contracts; specifying that the Board is not subject to certain provisions of  
16 law; requiring the Board to adopt a certain plan of operation to be submitted and  
17 approved by the Attorney General in consultation with the Public Service  
18 Commission; establishing the EmPOWER Maryland Buying Group Fund that  
19 consists of certain income, interest, and revenues, including certain funds from  
20 certain transition costs; requiring a certain annual financial report on the Fund;  
21 requiring that certain excess revenues be returned to members in a certain  
22 manner; requiring the Board to establish certain terms and conditions for  
23 membership in the EmPOWER Maryland Buying Group; authorizing the Board  
24 to require electricity suppliers to give a certain written notice; defining certain  
25 terms; making this Act an emergency measure; and generally relating to the  
26 creation of the EmPOWER Maryland Buying Group.

27 BY repealing and reenacting, without amendments,  
28 Article - Public Utility Companies  
29 Section 1-101(b)  
30 Annotated Code of Maryland  
31 (1998 Volume and 2005 Supplement)

32 BY adding to  
33 Article - Public Utility Companies

1 Section 1-101(j-1) and 7-510.1  
2 Annotated Code of Maryland  
3 (1998 Volume and 2005 Supplement)

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

6 **Article - Public Utility Companies**

7 1-101.

8 (b) (1) "Aggregator" means an entity or an individual that acts on behalf of a  
9 customer to purchase electricity or gas.

10 (2) "Aggregator" does not include:

11 (i) an entity or individual that purchases electricity or gas for its  
12 own use or for the use of its subsidiaries or affiliates;

13 (ii) a municipal electric utility or a municipal gas utility serving  
14 only in its distribution territory; or

15 (iii) a combination of governmental units that purchases electricity  
16 or gas for use by the governmental units.

17 (J-1) "EMPOWER MARYLAND BUYING GROUP" MEANS A NONPROFIT  
18 AGGREGATOR OF ELECTRICITY, GAS, OR OTHER ENERGY SERVICES FORMED UNDER §  
19 7-510.1 OF THIS ARTICLE.

20 7-510.1.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
22 INDICATED.

23 (2) "BOARD" MEANS THE BOARD OF DIRECTORS FOR THE EMPOWER  
24 MARYLAND BUYING GROUP.

25 (3) "FUND" MEANS THE EMPOWER MARYLAND BUYING GROUP FUND  
26 ESTABLISHED UNDER SUBSECTION (H) OF THIS SECTION.

27 (4) "PLAN OF OPERATION" MEANS THE ARTICLES, BYLAWS, AND  
28 OPERATING RULES AND PROCEDURES ADOPTED BY THE BOARD IN ACCORDANCE  
29 WITH SUBSECTION (G)(2) OF THIS SECTION.

30 (B) (1) THERE IS AN EMPOWER MARYLAND BUYING GROUP.

31 (2) THE EMPOWER MARYLAND BUYING GROUP SHALL BE FORMED AS A  
32 NONPROFIT, QUASI-PUBLIC CORPORATION.

1 (C) (1) THE PURPOSE OF THE EMPOWER MARYLAND BUYING GROUP IS TO  
2 NEGOTIATE THE LOWEST-COST, STABLE POWER SUPPLY ON BEHALF OF  
3 INDIVIDUALS, BUSINESSES, AND OTHER MEMBER GROUPS THROUGHOUT THE  
4 STATE.

5 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE EMPOWER  
6 MARYLAND BUYING GROUP OPERATE AS A NONPROFIT ENTITY AND THAT FUND  
7 REVENUE BE USED TO PROVIDE INITIAL FUNDING FOR THE START-UP OF THE  
8 EMPOWER MARYLAND BUYING GROUP AND THAT THE EMPOWER MARYLAND BUYING  
9 GROUP BECOME FISCALLY SELF-SUSTAINING.

10 (D) THE EMPOWER MARYLAND BUYING GROUP SHALL MEET ANY LICENSING  
11 REQUIREMENTS OR OBLIGATIONS THAT ARE REQUIRED FOR AN AGGREGATOR  
12 UNDER THIS ARTICLE.

13 (E) (1) THERE IS A BOARD OF DIRECTORS FOR THE EMPOWER MARYLAND  
14 BUYING GROUP.

15 (2) THE EMPOWER MARYLAND BUYING GROUP SHALL OPERATE  
16 SUBJECT TO THE SUPERVISION AND CONTROL OF THE BOARD.

17 (3) THE BOARD CONSISTS OF NINE MEMBERS, OF WHOM:

18 (I) THREE SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE  
19 OF DELEGATES;

20 (II) THREE SHALL BE APPOINTED BY THE PRESIDENT OF THE  
21 SENATE; AND

22 (III) THREE SHALL BE APPOINTED BY THE ATTORNEY GENERAL.

23 (4) A BOARD MEMBER APPOINTED UNDER THIS SUBSECTION MAY NOT  
24 BE AN EMPLOYEE, OFFICER, DIRECTOR, OR HAVE A SUBSTANTIAL FINANCIAL  
25 INTEREST IN AN ELECTRIC COMPANY, INCLUDING AN INVESTOR-OWNED ELECTRIC  
26 COMPANY, IN A GAS COMPANY, INCLUDING AN INVESTOR-OWNED GAS COMPANY, OR  
27 IN ANOTHER PERSON THAT PROVIDES ANY TYPE OF ELECTRIC, GAS, OR ENERGY  
28 SERVICES UNDER THIS ARTICLE.

29 (5) THE TERM OF AN APPOINTED MEMBER IS 4 YEARS.

30 (6) AT THE END OF A TERM, AN APPOINTED MEMBER CONTINUES TO  
31 SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

32 (7) AN APPOINTED MEMBER WHO IS APPOINTED AFTER A TERM HAS  
33 BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS  
34 APPOINTED AND QUALIFIES.

35 (8) A MEMBER OF THE BOARD MAY NOT RECEIVE COMPENSATION FOR  
36 SERVING ON THE BOARD BUT IS ENTITLED TO REIMBURSEMENT FOR EXPENSES

1 UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE  
2 BUDGET.

3 (F) (1) THE BOARD SHALL APPOINT AN EXECUTIVE DIRECTOR WHO SHALL  
4 BE THE CHIEF ADMINISTRATIVE OFFICER OF THE EMPOWER MARYLAND BUYING  
5 GROUP.

6 (2) THE EXECUTIVE DIRECTOR SHALL SERVE AT THE PLEASURE OF THE  
7 BOARD.

8 (3) UNDER THE DIRECTION OF THE BOARD, THE EXECUTIVE DIRECTOR  
9 SHALL PERFORM ANY DUTY OR FUNCTION THAT IS NECESSARY FOR THE OPERATION  
10 OF THE EMPOWER MARYLAND BUYING GROUP, INCLUDING HIRING OF EMPLOYEES  
11 AND CONTRACTING WITH ENTITIES FOR NECESSARY SERVICES.

12 (4) THE BOARD SHALL DETERMINE THE APPROPRIATE COMPENSATION  
13 FOR THE EXECUTIVE DIRECTOR AND OTHER EMPLOYEES THAT MAY NOT EXCEED  
14 THE AVERAGE SALARY FOR INDIVIDUALS EMPLOYED IN SIMILAR POSITIONS IN THE  
15 ELECTRIC, GAS, OR ENERGY INDUSTRIES.

16 (G) (1) THE BOARD IS NOT SUBJECT TO:

17 (I) THE PROVISIONS OF THE STATE FINANCE AND PROCUREMENT  
18 ARTICLE;

19 (II) THE PROVISIONS OF DIVISION I OF THE STATE PERSONNEL  
20 AND PENSIONS ARTICLE THAT GOVERN THE STATE PERSONNEL MANAGEMENT  
21 SYSTEM; OR

22 (III) THE PROVISIONS OF DIVISIONS II AND III OF THE STATE  
23 PERSONNEL AND PENSIONS ARTICLE.

24 (2) (I) THE BOARD SHALL ADOPT A PLAN OF OPERATION FOR THE  
25 EMPOWER MARYLAND BUYING GROUP.

26 (II) THE BOARD SHALL SUBMIT THE PLAN OF OPERATION AND ANY  
27 AMENDMENT TO THE PLAN OF OPERATION TO THE ATTORNEY GENERAL FOR  
28 APPROVAL AND TO THE COMMISSION FOR REVIEW AND COMMENT.

29 (III) THE ATTORNEY GENERAL SHALL CONSULT WITH THE  
30 COMMISSION BEFORE APPROVING THE PLAN OF OPERATION.

31 (3) ON AN ANNUAL BASIS, THE BOARD SHALL SUBMIT TO THE  
32 ATTORNEY GENERAL AND THE COMMISSION AN AUDITED FINANCIAL REPORT OF  
33 THE FUND PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

34 (H) (1) THERE IS AN EMPOWER MARYLAND BUYING GROUP FUND.

35 (2) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT  
36 TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 (3) THE TREASURER SHALL SEPARATELY HOLD AND THE COMPTROLLER  
2 SHALL ACCOUNT FOR THE FUND.

3 (4) THE FUND SHALL BE INVESTED AND REINVESTED AT THE  
4 DIRECTION OF THE BOARD IN A MANNER THAT IS CONSISTENT WITH THE  
5 REQUIREMENTS OF TITLE 5, SUBTITLE 6 OF THIS ARTICLE.

6 (5) ANY INVESTMENT EARNINGS SHALL BE RETAINED TO THE CREDIT  
7 OF THE FUND.

8 (6) THE FUND SHALL BE USED TO PROVIDE FUNDING ONLY FOR THE  
9 PURPOSES AUTHORIZED UNDER THIS SUBSECTION.

10 (7) THE FUND SHALL CONSIST OF:

11 (I) \$19,000,000 IN TRANSITION COSTS THAT WERE RECOVERED BY  
12 BALTIMORE GAS AND ELECTRIC COMPANY IN ACCORDANCE WITH § 7-513 OF THIS  
13 SUBTITLE AND PUBLIC SERVICE COMMISSION ORDER 75757;

14 (II) INCOME FROM INVESTMENTS THAT THE BOARD MAKES OR  
15 AUTHORIZES ON BEHALF OF THE FUND;

16 (III) INTEREST ON DEPOSITS OR INVESTMENTS OF MONEY FROM  
17 THE FUND;

18 (IV) REVENUES PAID TO THE EMPOWER MARYLAND BUYING GROUP  
19 BY THE MEMBERS;

20 (V) MONEY DONATED TO THE FUND; AND

21 (VI) MONEY AWARDED TO THE FUND THROUGH GRANTS.

22 (I) (1) REVENUES OF THE EMPOWER MARYLAND BUYING GROUP MAY BE  
23 USED TO PAY REASONABLE OPERATING EXPENSES APPROVED BY THE BOARD.

24 (2) FOR EACH FISCAL YEAR, THE REVENUES OF THE EMPOWER  
25 MARYLAND BUYING GROUP IN EXCESS OF THE AMOUNT NECESSARY FOR  
26 OPERATION SHALL BE RETURNED IN THE FORM OF A REBATE TO THE MEMBERS OF  
27 THE EMPOWER MARYLAND BUYING GROUP IN PROPORTION TO THE SERVICES  
28 PURCHASED BY EACH MEMBER DURING THE FISCAL YEAR.

29 (J) (1) THE BOARD SHALL ESTABLISH THE TERMS AND CONDITIONS FOR  
30 MEMBERSHIP IN THE EMPOWER MARYLAND BUYING GROUP.

31 (2) (I) THE TERMS AND CONDITIONS FOR MEMBERSHIP SHALL  
32 INCLUDE A 1-YEAR TERM OF MEMBERSHIP IN THE EMPOWER MARYLAND BUYING  
33 GROUP.

34 (II) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,  
35 IF A MEMBER OF THE EMPOWER MARYLAND BUYING GROUP CANCELS MEMBERSHIP

1 BEFORE THE 1-YEAR TERM HAS EXPIRED, THE BOARD MAY AUTHORIZE A  
2 REASONABLE CANCELLATION FEE.

3 (3) IF THE EMPOWER MARYLAND BUYING GROUP IS UNABLE TO  
4 NEGOTIATE A CONTRACT THAT SAVES MEMBERS AT LEAST 10% ON THE COMMODITY  
5 PORTION OF THE ELECTRICITY RATE, MEMBERSHIP MAY BE CANCELED WITHOUT A  
6 CANCELLATION FEE.

7 (K) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE BOARD  
8 MAY REQUIRE THAT AN ELECTRICITY SUPPLIER GIVE WRITTEN NOTICE OF THE  
9 SERVICES AVAILABLE THROUGH THE EMPOWER MARYLAND BUYING GROUP.

10 (2) THE NOTICE UNDER THIS SECTION SHALL INCLUDE:

11 (I) A COMPARISON OF THE RATES OFFERED THROUGH THE  
12 EMPOWER MARYLAND BUYING GROUP AND THE RATES PROVIDED UNDER THE  
13 CURRENT STANDARD OFFER SERVICE;

14 (II) THE TERMS AND CONDITIONS OF SERVICE OFFERED THROUGH  
15 THE EMPOWER MARYLAND BUYING GROUP; AND

16 (III) ANY OTHER PROVISION DETERMINED BY THE BOARD AS  
17 NECESSARY TO ASSIST INDIVIDUALS AND BUSINESSES IN DETERMINING WHETHER  
18 MEMBERSHIP IN THE EMPOWER MARYLAND BUYING GROUP WOULD BE BENEFICIAL.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
20 measure, is necessary for the immediate preservation of the public health or safety,  
21 has been passed by a ye and nay vote supported by three-fifths of all the members  
22 elected to each of the two Houses of the General Assembly, and shall take effect from  
23 the date it is enacted.