

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.



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

12 BY renumbering

13 Article – Corporations and Associations

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

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

18 Annotated Code of Maryland

19 (2014 Replacement Volume and 2019 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Public Utilities

22 Section 2–112(a)

23 Annotated Code of Maryland

24 (2010 Replacement Volume and 2019 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article – Corporations and Associations

27 Section 5–601 and 5–632(b)

28 Annotated Code of Maryland

29 (2014 Replacement Volume and 2019 Supplement)

30 BY adding to

31 Article – Corporations and Associations

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

34 Annotated Code of Maryland

35 (2014 Replacement Volume and 2019 Supplement)

36 BY repealing and reenacting, with amendments,

37 Article – Corporations and Associations

38 Section ~~5–646(b)~~ 5–647(b)

39 Annotated Code of Maryland

40 (2014 Replacement Volume and 2019 Supplement)

41 (As enacted by Section 1 of this Act)

Preamble

1
2 WHEREAS, In 1938, 184 rural residents joined together under the Rural
3 Electrification Act to form Choptank Electric Cooperative, an electric cooperative that
4 would bring electricity to their homes and farms because for-profit electric companies
5 would not; and

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

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

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

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

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

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

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

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

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

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

1 **Article – Public Utilities**

2 2–112.

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

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

12 **Article – Corporations and Associations**

13 5–601.

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

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

16 (c) **(C)** “Cooperative” means a corporation that:

17 (1) Is organized under this subtitle; or

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

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

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

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

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

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

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

29 (2) “Person” includes:

- 1 (i) The State;
 - 2 (ii) A county, municipal corporation, or other political subdivision of
3 the State; and
 - 4 (iii) A unit of federal, State, or local government.
- 5 5-632.

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

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

13 **PART VI. MEMBER-REGULATED COOPERATIVES.**

14 **5-635.**

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

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

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

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

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

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

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

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

5 **5-636.**

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

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

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

14 **(1) § 5-103;**

15 **(2) § 5-201;**

16 **(3) § 5-202;**

17 **(4) § 5-303;**

18 **(5) § 5-304;**

19 **(6) § 7-103;**

20 **(7) § 7-104;**

21 **(8) § 7-203;**

22 **(9) § 7-207;**

23 **(10) § 7-302;**

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

25 **(12) TITLE 7, SUBTITLE 7; AND**

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

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

5 **5-639.**

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

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

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

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

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

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

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

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

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

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

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

28 **(D) A DECISION MADE UNDER A FORMAL OR INFORMAL COMPLAINT**
29 **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

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

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

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

12 5-642.

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

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

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

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

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

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

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

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

32 ~~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.