

SENATE BILL 540

C5, C1

0lr0813
CF 0lr1757

By: **Senators Hershey, Carozza, Eckardt, and Gallion**

Introduced and read first time: January 30, 2020

Assigned to: Finance

A BILL ENTITLED

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; establishing a
23 process for a member-regulated cooperative to revert to a cooperative; stating that
24 the Commission has jurisdiction over a member-regulated cooperative that has
25 elected to revert to a cooperative on issuance of a certain order; requiring the
26 Commission to issue a certain order within a certain period of time; stating that the
27 provisions of this Act prevail if there is a certain conflict; defining certain terms;
28 making conforming changes; and generally relating to electric cooperatives and
29 member-regulated cooperatives.

30 BY renumbering

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Corporations and Associations
2 Section 5–635 through 5–642, respectively, and the part “Part VI. Miscellaneous
3 Provisions”
4 to be Section 5–645 through 5–652 respectively, and the part “Part VII.
5 Miscellaneous Provisions”
6 Annotated Code of Maryland
7 (2014 Replacement Volume and 2019 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Public Utilities
10 Section 2–112(a)
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2019 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Corporations and Associations
15 Section 5–601 and 5–632(b)
16 Annotated Code of Maryland
17 (2014 Replacement Volume and 2019 Supplement)

18 BY adding to
19 Article – Corporations and Associations
20 Section 5–635 through 5–642 to be under the new part “Part VI. Member–Regulated
21 Cooperatives”
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2019 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Corporations and Associations
26 Section 5–646(b)
27 Annotated Code of Maryland
28 (2014 Replacement Volume and 2019 Supplement)
29 (As enacted by Section 1 of this Act)

30 Preamble

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

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

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

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

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

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

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

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

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

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

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

26 **Article - Public Utilities**

27 2-112.

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

33 (2) EXCEPT AS PROVIDED IN TITLE 5, SUBTITLE 6, PART VI OF THE
34 CORPORATIONS AND ASSOCIATIONS ARTICLE, THE COMMISSION DOES NOT HAVE

1 **JURISDICTION OVER A MEMBER–REGULATED COOPERATIVE AS DEFINED IN § 5–601**
 2 **OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.**

3 **Article – Corporations and Associations**

4 5–601.

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

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

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

8 (1) Is organized under this subtitle; or

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

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

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

14 (f) **“MEMBER–REGULATED COOPERATIVE” MEANS A COOPERATIVE:**

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

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

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

20 (2) **“Person”** includes:

21 (i) The State;

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

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

25 5–632.

26 (b) (1) [A] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
 27 **SUBSECTION, A proposed dissolution shall be approved by the affirmative vote of not less**

1 than two-thirds of the members voting on the matter at an annual or special meeting of
2 the members.

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

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

7 **5-635.**

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

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

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

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

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

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

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

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

29 **5-636.**

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

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

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

9 **(1) § 5-103;**

10 **(2) § 5-201;**

11 **(3) § 5-202;**

12 **(4) § 5-303;**

13 **(5) § 5-304;**

14 **(6) § 7-103;**

15 **(7) § 7-104;**

16 **(8) § 7-203;**

17 **(9) § 7-207;**

18 **(10) § 7-302;**

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

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

21 **(13) § 13-101.**

22 **5-637.**

23 **(A) A MEMBER-REGULATED COOPERATIVE SHALL MAKE AVAILABLE TO ITS**
24 **MEMBERS:**

1 **(1) RATE SCHEDULES, TARIFFS, AND TERMS AND CONDITIONS OF**
2 **SERVICE;**

3 **(2) FINANCIAL AND STATISTICAL INFORMATION REGARDING:**

4 **(I) OPERATING REVENUES;**

5 **(II) REVENUES PER RATE CLASS;**

6 **(III) NUMBER OF MEMBERS PER RATE CLASS; AND**

7 **(IV) NUMBER OF METERS PER RATE CLASS;**

8 **(3) DATA AND INFORMATION CONCERNING LOAD MANAGEMENT,**
9 **ENERGY CONSERVATION, AND OTHER SIMILAR PROGRAMS;**

10 **(4) INFORMATION CONCERNING ONGOING CONSUMER EDUCATION**
11 **PROGRAMS; AND**

12 **(5) INFORMATION CONCERNING THE MEMBER-REGULATED**
13 **COOPERATIVE'S PERFORMANCE, INCLUDING INCOME STATEMENTS, BALANCE**
14 **SHEETS, AND RELIABILITY DATA.**

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

18 **(1) NOTICE OF THE PROPOSED RATES;**

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

20 **(3) THE OPPORTUNITY TO OBSERVE THE PORTION OF THE MEETING**
21 **IN WHICH THE BOARD OF DIRECTORS VOTES ON THE PROPOSED RATES.**

22 **5-638.**

23 **A MEMBER-REGULATED COOPERATIVE SHALL:**

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

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

1 **5-639.**

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

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

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

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

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

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

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

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

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

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

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

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

26 **5-640.**

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

- 1 **(1) TO LOW-INCOME MEMBERS;**
2 **(2) TO A MEMBER IN COLD WEATHER; AND**
3 **(3) TO A MEMBER IN HOT WEATHER.**

4 **(B) THE BOARD OF DIRECTORS MAY, AS NECESSARY, AMEND THE POLICIES**
5 **REGARDING TERMINATION OF SERVICE.**

6 **5-641.**

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

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

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

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

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

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

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

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

26 **5-642.**

27 **IF THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THIS PART AND OTHER**
28 **PROVISIONS OF LAW, THE PROVISIONS OF THIS PART SHALL PREVAIL.**

1 **5-643. RESERVED.**

2 **5-644. RESERVED.**

3 5-646.

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

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2020.