

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 999
Economic Matters

(Delegate Sample-Hughes, *et al.*)

Finance

Member-Regulated Cooperatives - Establishment (Rural Broadband for the
Eastern Shore Act of 2020)

This emergency bill establishes processes for an electric cooperative to operate as a member-regulated cooperative on the Eastern Shore of the State, subject to specified requirements. The Public Service Commission (PSC) retains limited jurisdiction over a member-regulated cooperative – which does not include rate setting – as specified. The bill also establishes a related reporting requirement.

Fiscal Summary

State Effect: PSC can handle any administrative requirements with existing budgeted resources. The bill does not otherwise materially affect State finances or operations, although PSC assessments are reallocated if the Choptank Electric Cooperative becomes a member-regulated cooperative, likely no earlier than FY 2021, as discussed below.

Local Effect: If Choptank becomes a member-regulated cooperative, likely no earlier than FY 2021, local jurisdictions served by the cooperative likely experience additional deployment of broadband facilities, and Choptank would no longer be subject to rate regulation by PSC. The effect on a particular local government’s revenues or expenditures is unknown, but could be significant.

Small Business Effect: Meaningful.

Analysis

Bill Summary: To operate as a member-regulated cooperative, a cooperative must either:

- submit a request to PSC for a waiver from the application of affiliate regulations, which PSC must review expeditiously; or
- conduct a vote of the cooperative's members, subject to various specified requirements, such as (1) a majority vote at a meeting at which at least 15% of cooperative members vote and (2) a written plan for making broadband Internet service available in a manner that maximizes deployment with available financial resources.

A member-regulated cooperative may not adopt a new rate or alter its rates or charges for the services it provides without providing notice to its members and an opportunity to comment and observe the board of director's vote to change the rates. A member-regulated cooperative must also:

- make various information available to its members, such as rate schedules, tariffs, financial information, and consumer education programs;
- implement a net metering program consistent with State law;
- adopt procedures to hear, decide, and resolve complaints; and
- establish policies related to termination of service.

A member-regulated cooperative must revert to an electric cooperative, as specified.

If there is a conflict between the provisions of the bill related to member-regulated cooperatives and other provisions of law, the provisions of the bill prevail.

A member-regulated cooperative must report to the Senate Finance Committee and the House Economic Matters Committee on the status of broadband Internet deployment by December 1 each year.

Access to a Member-regulated Cooperative's Facilities and Related Fees

Generally, a member-regulated cooperative may not prohibit a telecommunications or cable service provider from accessing a pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by the member-regulated cooperative. However, access may be denied if it is on a nondiscriminatory basis and if the member-regulated cooperative determines that (1) the facility does not have sufficient capacity to allow access or (2) that allowing access would create safety, reliability, or engineering concerns. A member-regulated cooperative must charge a reasonable rate for access to such facilities,

and may not charge a rate for access 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.

Intent to Reconsider in During the 2028 Legislative Session

It is intent of the General Assembly to deliberate and determine whether the provisions of the bill must be terminated during the 2028 legislative session. However, if the General Assembly does not take any action to terminate the provisions, they continue to be in full force and effect.

Current Law: An electric cooperative has the powers enumerated in law, including the power to:

- generate, manufacture, purchase, acquire, accumulate, and transmit electricity;
- 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 local government of the area in which the lines are proposed to be constructed and under any reasonable regulations and conditions required in the consent;
- exercise the power of condemnation in the same manner as that authorized for corporations that construct or operate electric transmission and distribution lines or systems;
- 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 in a similar manner and subject to similar conditions as electric transmission and distribution lines; and
- 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.

The provisions of the Public Utilities Article that member-regulated cooperatives remain subject to under the bill cover topics such as franchises, standards of service, accident notification, required local consent to construct power lines, collection of an environmental surcharge, certificates of public convenience and necessity, meter inspections, electric industry restructuring and customer choice, the renewable energy portfolio standard (Choptank is exempt under existing law), and the application of specified criminal penalties.

PSC Affiliate Regulations

PSC affiliate regulations apply to most electric and/or gas companies in the State, with the major exception being municipal electric and/or gas companies. The regulations also do not apply in an emergency. Generally, PSC may waive an affiliate regulation for good cause shown. The purposes of the regulations are to promote competitive markets and ensure that an electric or gas utility does not subsidize its affiliates.

Background: The Choptank Electric Cooperative was formed in 1938 and provides electricity to approximately 54,000 customers across large areas of the Eastern Shore of the State; a map of its service territory can be found on PSC's [website](#) (See Figure 1). A&N Electric Cooperative also serves a small number of customers on Smith Island in Somerset County. The bill further facilitates the expansion of rural broadband Internet on the Eastern Shore by allowing Choptank, which has a large geographic footprint in rural areas, to directly provide high-speed fiber Internet service to its members. The 2019 [report](#) by the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service discusses the issue of rural broadband in depth.

State Fiscal Effect: This analysis assumes Choptank becomes a member-regulated cooperative under the bill, likely no earlier than fiscal 2021. If Choptank does not, then the bill generally has no effect beyond possible PSC administrative requirements, which PSC can handle with existing budgeted resources.

Member-regulated cooperatives under the bill are not subject to the annual assessment process that funds PSC and the Office of People's Counsel; however, PSC is still responsible for overseeing certain member-related cooperative functions. Choptank's fiscal 2020 assessment was \$310,000; that lost revenue must be absorbed by increasing assessments on other regulated entities. The effect on ratepayers of reallocating that amount is minimal.

Local Fiscal Effect: Assuming Choptank becomes a member-regulated cooperative, likely no earlier than fiscal 2021, local jurisdictions served by Choptank likely experience additional deployment of broadband infrastructure. The effect on a particular local government's revenues (permits, property taxes) or expenditures, relative to what they would have been under current law, is unknown, but could be significant. Further, Choptank would no longer be subject to rate regulation by PSC. Historically, electric companies have received only a portion of their requested rate increases during rate cases before PSC; therefore, electric rates may increase beyond what they otherwise would have been.

Small Business Effect: Assuming Choptank becomes a member-regulated cooperative, small businesses in Choptank's service territory likely benefit from additional access to

broadband Internet; conversely, Choptank's rates are no longer subject to regulation by PSC, which may increase rates beyond what they otherwise would have been.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 540 (Senator Hershey, *et al.*) - Finance.

Information Source(s): Public Service Commission; Office of People's Counsel; Department of Legislative Services

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