

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 359
Economic Matters

(Delegate G. Clagett, *et al.*)

Public Service Companies - Transfer of Franchise

This bill prohibits a public service company from assigning, leasing, or transferring a franchise or a right under a franchise to a corporation, whether domestic or foreign, that is or may become a public service company or to any affiliate of the corporation unless (1) the corporation is incorporated in the State; or (2) the affiliate that is or may become a public service company is incorporated in the State. The bill defines “affiliate” as a person that directly or indirectly controls, is controlled by, or is under common control or has, directly or indirectly, any economic interest in another person.

Fiscal Summary

State Effect: The bill would not materially affect State government operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The prior authorization of the Public Service Commission (PSC) is required for any public service company to (1) assign, lease, or transfer a franchise or a right under a franchise; (2) enter into any agreement or contract that materially affects a franchise or a right under a franchise; or (3) abandon or discontinue the exercise of a franchise or a right as a whole or in part.

Background: A franchise, or right to operate, is granted by legislative act (*Charles Co. Sanitary District, Inc. v. Charles Utilities Inc.*, 298 A2nd 419, 423 (1973)). The franchise is granted by local governments. Statute provides that a public service company may not exercise a franchise granted by law except to the extent authorized by PSC. For illustrative purposes, Baltimore City grants a franchise for Baltimore Gas and Electric Company (BG&E) and PSC authorizes BG&E to use it. PSC would have to approve the transfer by BG&E to another entity and authorize the use of the franchise by that new entity.

PSC indicates that transfers of water company franchises have occurred in Maryland. After the transfer request is filed, PSC staff reviews what company holds the franchise, what company is receiving it, and what pertinent information, including financial information, ability to perform, notice to be given to customers, etc., is provided. PSC may also verify, if corporate entities are involved, that the corporations involved do not have outstanding tax issues with the State Department of Assessments and Taxation.

Additional Information

Prior Introductions: A similar bill, HB 705 2004, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 3, 2005
mp/jr

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