L6, C5

CONSTITUTIONAL AMENDMENT

4lr3027 CF HB 729

By: Senator Raskin

Introduced and read first time: February 10, 2014 Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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County and Municipal Street Lighting Investment Act

3 FOR the purpose of proposing an amendment to the Marvland Constitution to 4 authorize the General Assembly to provide that certain property consisting of $\mathbf{5}$ street lighting equipment may be taken by a county or municipality for public 6 use immediately on payment to the owner of the property of the amount that 7 the county or municipality estimates to be the net book value of the property 8 calculated in a certain manner, provided the legislation also requires the 9 payment of any further sum that may be subsequently awarded by the Public Service Commission; submitting the amendment to the Maryland Constitution 10to the qualified voters of the State for their adoption or rejection; authorizing a 11 12certain county or municipality, after giving certain notice to certain persons, to 13 convert its street lighting service to a certain alternative energy only tariff, 14acquire certain street lighting equipment from the electric company, and enter 15into an agreement to purchase electricity for a certain use from any available electricity supplier under certain circumstances; authorizing a county or 16 17municipality to request that an electric company remove certain street lighting 18 equipment under certain circumstances; requiring a county or municipality to 19pay the net book value of certain street lighting equipment that is being 20removed and the costs of its removal under certain circumstances; providing 21that the net book value of certain street lighting equipment shall be calculated 22in a certain manner or be determined in a proceeding before the Public Service 23Commission under certain circumstances; requiring a certain county or 24municipality to notify a certain electric company of any alteration to the 25county's or municipality's street lighting equipment inventory within a certain 26period of time under certain circumstances; prohibiting a certain agreement or 27contract for sale or license agreement from including certain fees or other costs 28under certain circumstances; prohibiting an electric company from making 29certain requirements of a certain county or municipality; requiring that certain 30 workers be fully qualified and meet certain requirements; requiring that certain 31disputes be submitted to the Commission for resolution; requiring the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.



1 Commission to issue a determination on certain disputes within a certain time $\mathbf{2}$ period; requiring each electric company to develop a certain alternative energy 3 only tariff for street lighting on or before a certain date; requiring a certain 4 alternative energy only tariff to include certain fees; requiring that a certain $\mathbf{5}$ alternative energy only tariff provide for monthly bills for street lighting that 6 include a schedule of electricity charges based on a certain determination; 7prohibiting the alternative energy only tariff from including certain charges; 8 requiring that, for street lighting equipment in use on a certain date, the 9 alternative energy only tariff shall use certain calculation methods and rates 10 that existed on a certain date; requiring the alternative energy only tariff to 11 provide for reasonable rates for street lighting equipment that is adopted after a 12certain date; requiring the alternative energy only tariff to provide for options for certain street lighting controls; requiring the Commission to issue a decision 13 regarding the adoption of a certain alternative energy only tariff within a 1415certain period of time after receiving the alternative energy only tariff from an 16 electric company; stating the findings and declarations of the General 17Assembly; making certain clarifying changes; defining a certain term; making 18 certain provisions of this Act contingent on the passage and ratification of a 19certain constitutional amendment; and generally relating to the purchase of 20certain street lighting equipment by a county or municipality from an electric 21company and tariffs for street lighting.

- 22 BY proposing an addition to the Maryland Constitution
- 23 Article III Legislative Department
- 24 Section 40D
- 25 BY repealing and reenacting, with amendments,
- 26 Article Local Government
- 27 Section 1–1309
- 28 Annotated Code of Maryland
- 29 (2013 Volume)
- 30 BY adding to
- 31 Article Public Utilities
- 32 Section 4–211
- 33 Annotated Code of Maryland
- 34 (2010 Replacement Volume and 2013 Supplement)

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 36 MARYLAND, (Three-fifths of all the members elected to each of the two Houses 37 concurring), That it be proposed that the Maryland Constitution read as follows:

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Article III – Legislative Department

39 **40D**.

THE GENERAL ASSEMBLY SHALL ENACT NO LAW AUTHORIZING PRIVATE 1 $\mathbf{2}$ PROPERTY TO BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION, TO 3 BE AGREED UPON BETWEEN THE PARTIES OR AWARDED BY A JURY, BEING FIRST 4 PAID OR TENDERED TO THE PARTY ENTITLED TO SUCH COMPENSATION, EXCEPT THAT WHERE SUCH PROPERTY CONSISTS OF STREET LIGHTING EQUIPMENT $\mathbf{5}$ 6 THAT IS DESIRED BY THE COUNTY OR MUNICIPALITY IN WHICH THE STREET 7 LIGHTING EQUIPMENT IS INSTALLED, THE GENERAL ASSEMBLY MAY PROVIDE THAT SUCH PROPERTY MAY BE TAKEN IMMEDIATELY BY THE COUNTY OR 8 9 MUNICIPALITY ON PAYMENT TO THE OWNER OF THE PROPERTY OF THE AMOUNT 10 THAT THE COUNTY OR MUNICIPALITY ESTIMATES TO BE THE NET BOOK VALUE OF THE PROPERTY, CALCULATED, USING FEDERAL ENERGY REGULATORY 11 12COMMISSION ACCOUNTING METHODS AND NOT USING METHODS OTHER THAN 13THOSE USED FOR STANDARD RATE SETTING, AS THE ORIGINAL COST OF THE PROPERTY, LESS DEPRECIATION, OF ANY ACTIVE OR INACTIVE EXISTING 1415STREET LIGHTING EQUIPMENT INSTALLED IN THE COUNTY OR MUNICIPALITY 16 AS OF THE DATE THE COUNTY OR MUNICIPALITY EXERCISES ITS RIGHT OF ACQUISITION, PROVIDED THE LEGISLATION ALSO REQUIRES THE PAYMENT OF 17ANY FURTHER SUM THAT MAY BE SUBSEQUENTLY AWARDED BY THE PUBLIC 18**SERVICE COMMISSION.** 19

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland 21 read as follows:

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Article - Local Government

1-1309.

24 (a) (1) In this section[, "electric] THE FOLLOWING WORDS HAVE THE 25 MEANINGS INDICATED.

26 (2) "ELECTRIC company" has the meaning stated in § 1–101 of the 27 Public Utilities Article.

28 (3) (I) "STREET LIGHTING EQUIPMENT" MEANS ALL
29 EQUIPMENT OWNED BY AN ELECTRIC COMPANY USED TO LIGHT STREETS IN THE
30 COUNTY OR MUNICIPALITY.

31 (II) "STREET LIGHTING EQUIPMENT" INCLUDES:
 32 1. ALL CAPITAL EQUIPMENT AS DEFINED UNDER
 33 FERC ACCOUNTS 373;

4

SENATE BILL 979

LIGHTING BALLASTS, FIXTURES, MAST ARMS, 1 2. $\mathbf{2}$ PHOTOCELLS, LOOPS, AND OTHER EQUIPMENT NECESSARY FOR THE 3 **CONVERSION OF ELECTRIC ENERGY INTO STREET LIGHTING EQUIPMENT;** 4 3. **DECORATIVE STREET AND AREA LIGHTING;** $\mathbf{5}$ **4**. SOLID-STATE LED LIGHTING TECHNOLOGIES; 6 AND 7 5. INDUCTION LIGHTING TECHNOLOGIES. 8 (III) "STREET LIGHTING EQUIPMENT" DOES NOT INCLUDE 9 JOINT USE UTILITY POLES ON WHICH THE EQUIPMENT IS FIXED. 10 **(B)** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT: 11 (1) TAXPAYERS ARE MANDATED TO PAY ELECTRIC COMPANIES 12LARGE SUMS EVERY YEAR TO LIGHT STREETS IN COUNTIES AND 13**MUNICIPALITIES;** 14 (2) COUNTIES AND MUNICIPALITIES ARE LIMITED IN HOW THIS 15PUBLIC SAFETY RESOURCE CAN BE MANAGED BECAUSE THE COUNTIES AND MUNICIPALITIES DO NOT OWN OR CONTROL THE STREET LIGHTING EQUIPMENT 16 17 WITHIN THEIR JURISDICTIONS: 18 STREET LIGHTING IS A SIGNIFICANT ENERGY EXPENSE FOR (3) 19 COUNTIES AND MUNICIPALITIES AND PRESENTS AN OPPORTUNITY FOR 20COMMUNITIES TO REDUCE THEIR CARBON FOOTPRINT AND ADDRESS CLIMATE 21CHANGE THROUGH EFFICIENCY UPGRADES: 22THERE IS NO INCENTIVE IN THE APPLICABLE ELECTRIC RATE (4) 23TARIFF FOR INSTALLING ENERGY EFFICIENT LIGHTING TECHNOLOGIES THAT 24MAY REDUCE BOTH POWER AND MAINTENANCE EXPENSES; 25THERE IS NO PROVISION IN THE APPLICABLE ELECTRIC RATE (5) 26TARIFF FOR COUNTIES AND MUNICIPALITIES TO WORK COLLECTIVELY TO 27MANAGE THE MAINTENANCE OF STREET LIGHTING EQUIPMENT; 28(6) COUNTIES AND MUNICIPALITIES AROUND THE COUNTRY HAVE 29SAVED CONSIDERABLE RESOURCES BY PURCHASING THEIR STREET LIGHTING 30 EQUIPMENT FROM ELECTRIC COMPANIES AND CONTRACTING FOR THE MAINTENANCE INDEPENDENTLY; AND 31

1 (7) STREET LIGHTING COSTS SHOULD BE REDUCED AND SERVICE 2 SHOULD BE IMPROVED BY:

3 (I) IMPROVING PUBLIC SAFETY WITH STREET LIGHTS THAT
 4 PROVIDE BETTER ILLUMINATION;

5 (II) REDUCING MAINTENANCE COSTS BY ALLOWING 6 COUNTIES AND MUNICIPALITIES TO OWN THE STREET AND AREA LIGHTING 7 WITHIN THEIR JURISDICTIONS AND TO ENTER INTO REGIONAL MAINTENANCE 8 SERVICE CONTRACTS;

9 (III) REDUCING WHOLE SYSTEM COST THROUGH COUNTY OR
 10 MUNICIPAL OWNERSHIP AND BY ADOPTING TARIFFS THAT INCLUDE ONLY THE
 11 DISTRIBUTION ENERGY CONSUMED;

12(IV) PROVIDING FOR THE USE OF INNOVATIVE13TECHNOLOGIES FOR MORE EFFICIENT LIGHTING; AND

14(V)PROVIDING MORE RESPONSIVE SERVICE FOR LIGHTING15REPAIRS.

16 [(b)] (C) This section applies to all counties and municipalities.

17 [(c) On written request by a county or municipality, an electric company shall 18 sell to the county or municipality some or all of the electric company's existing street 19 lighting equipment that is located in the county or municipality.]

20AFTER GIVING 60 DAYS' WRITTEN NOTICE TO THE ELECTRIC **(D)** 21COMPANY AND THE PUBLIC SERVICE OR COMMISSION, A COUNTY 22MUNICIPALITY THAT RECEIVES STREET LIGHTING SERVICE FROM AN ELECTRIC 23COMPANY IN ACCORDANCE WITH A TARIFF PROVIDING FOR THE USE BY THE 24COUNTY OR MUNICIPALITY OF STREET LIGHTING EQUIPMENT OWNED BY AN 25**ELECTRIC COMPANY MAY:**

26(1) CONVERT ITS STREET LIGHTING SERVICE TO AN27ALTERNATIVE ENERGY ONLY TARIFF SET IN ACCORDANCE WITH § 4–211 OF THE28PUBLIC UTILITIES ARTICLE;

29(2) ACQUIRE THE STREET LIGHTING EQUIPMENT FROM THE30ELECTRIC COMPANY AT SOME OR ALL LOCATIONS WITHIN THE COUNTY OR31MUNICIPALITY; AND

1 (3) ENTER INTO AN AGREEMENT TO PURCHASE ELECTRICITY FOR 2 THE USE OF THE STREET LIGHTING EQUIPMENT FROM ANY AVAILABLE 3 ELECTRICITY SUPPLIER.

4 [(d)] (E) (1) If the county or municipality [purchases] EXERCISES ITS 5 OPTION TO PURCHASE street lighting equipment from an electric company AND 6 CONVERT THE STREET LIGHTING SERVICE TO AN ALTERNATE ENERGY ONLY 7 TARIFF IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, the county or 8 municipality shall pay to the electric company the fair market value of the street 9 lighting equipment.

10 (2) (I) AFTER EXERCISING ITS OPTION IN ACCORDANCE WITH 11 SUBSECTION (D) OF THIS SECTION, THE COUNTY OR MUNICIPALITY MAY 12 REQUEST THAT THE ELECTRIC COMPANY REMOVE THE STREET LIGHTING 13 EQUIPMENT THAT IS LOCATED IN THE COUNTY'S OR MUNICIPALITY'S 14 JURISDICTION THAT HAS NOT BEEN ACQUIRED FROM THE ELECTRIC COMPANY.

15(II)THE COUNTY OR MUNICIPALITY SHALL PAY TO THE16ELECTRIC COMPANY:

171. THE COST OF THE REMOVAL OF THE STREET18LIGHTING EQUIPMENT BY THE ELECTRIC COMPANY; AND

192.THE NET BOOK VALUE OF THE STREET LIGHTING20EQUIPMENT REMOVED.

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(3)

NET BOOK VALUE SHALL BE:

(I) CALCULATED AS THE ORIGINAL COST OF THE STREET
LIGHTING EQUIPMENT, LESS DEPRECIATION, NET OF ANY SALVAGE VALUE OF
ANY ACTIVE OR INACTIVE EXISTING STREET LIGHTING EQUIPMENT INSTALLED
IN THE COUNTY OR MUNICIPALITY AS OF THE DATE THE COUNTY OR
MUNICIPALITY EXERCISES ITS RIGHT OF ACQUISITION; OR

27(II) DETERMINED IN A PROCEEDING BEFORE THE PUBLIC28SERVICE COMMISSION.

29 [(e)] (F) A county or municipality that [purchases street lighting 30 equipment] EXERCISES ITS OPTION in accordance with SUBSECTION (D) OF this 31 section:

32 (1) shall be responsible for the maintenance of the street lighting 33 equipment; [and]

1 (2) may contract with an outside entity for the maintenance of the 2 street lighting equipment; AND

3 (3) SHALL NOTIFY THE ELECTRIC COMPANY OF ANY ALTERATION 4 TO THE COUNTY'S OR MUNICIPALITY'S STREET LIGHTING EQUIPMENT 5 INVENTORY WITHIN 30 DAYS AFTER THE ALTERATION.

6 [(f)] (G) (1) Any person who controls the right to use space on any pole, 7 lampost, or other mounting surface previously used in the county or municipality by 8 the electric company for street lighting equipment shall allow a county or municipality 9 that has purchased the street lighting equipment to assume the rights and obligations 10 of the electric company with respect to the space for the unexpired term of any lease or 11 other agreement under which the electric company used the space.

12 (2) Notwithstanding paragraph (1) of this subsection, the county or 13 municipality may not restrict or prohibit universal access for electricity or any other 14 service by assuming the rights and obligations of an electric company as to space on 15 any pole, lamppost, or other mounting surface used for street lighting equipment.

16 (H) ANY AGREEMENT OR CONTRACT FOR SALE OF OR LICENSE 17 AGREEMENT THAT APPLIES TO EQUIPMENT MOUNTED ON JOINT USE POLES MAY 18 NOT INCLUDE ANY FEES OR OTHER COSTS NOT INCLUDED IN THE ALTERNATIVE 19 ENERGY ONLY TARIFF UNDER § 4–211 OF THE PUBLIC UTILITIES ARTICLE.

20 (I) AN ELECTRIC COMPANY MAY NOT REQUIRE FROM A COUNTY OR 21 MUNICIPALITY EXERCISING ITS OPTION UNDER SUBSECTION (D) OF THIS 22 SECTION:

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(1) ANY PROTECTIONS OR INDEMNIFICATIONS; OR

(2) ANY STANDARDS THE ELECTRIC COMPANY DOES NOT
 CURRENTLY PROVIDE OR REQUIRE OF THEMSELVES IN THE OPERATION AND
 MAINTENANCE OF STREET LIGHTING EQUIPMENT.

(J) ALL WORKERS EMPLOYED BY A COUNTY OR MUNICIPALITY TO OPERATE AND MAINTAIN STREET LIGHTING EQUIPMENT MUST BE FULLY QUALIFIED AND MEET ANY FEDERAL AND STATE REQUIREMENTS.

[(3)] (K) (1) Any dispute between an electric company and a
 county or municipality [arising under this subsection] REGARDING THE
 COMPENSATION TO BE PAID TO THE ELECTRIC COMPANY OR ANY OTHER
 MATTER ARISING IN CONNECTION WITH THE EXERCISE OF THE OPTION IN
 ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION shall be submitted to the
 Public Service Commission for resolution.

WITHIN 60 DAYS AFTER RECEIPT OF A REQUEST FOR 1 (2) $\mathbf{2}$ PUBLIC SERVICE **RESOLUTION.** THE COMMISSION SHALL ISSUE Α 3 DETERMINATION ON A DISPUTE SUBMITTED IN ACCORDANCE WITH PARAGRAPH 4 (1) OF THIS SUBSECTION. $\mathbf{5}$ **Article – Public Utilities** 6 4-211. 7 IN THIS SECTION, "STREET LIGHTING EQUIPMENT" HAS THE (A) 8 MEANING STATED IN § 1–1309 OF THE LOCAL GOVERNMENT ARTICLE. 9 ON OR BEFORE DECEMBER 1, 2014, EACH ELECTRIC **(B)** (1) COMPANY, IN CONSULTATION WITH THE MARYLAND ENERGY ADMINISTRATION, 10 11 SHALL FILE WITH THE COMMISSION AN ALTERNATE ENERGY ONLY TARIFF FOR 12STREET LIGHTING THAT INCLUDES ONLY ELECTRIC DISTRIBUTION FEES. THE ALTERNATIVE ENERGY ONLY TARIFF SHALL 13 (2) **(I)** 14 PROVIDE FOR MONTHLY BILLS FOR STREET LIGHTING THAT SHALL INCLUDE A 15SCHEDULE OF ELECTRICITY CHARGES BASED ON A DETERMINATION OF ANNUAL 16 KILOWATT-HOUR USAGE PER LUMEN RATING OR NOMINAL WATTAGE OF ALL 17 TYPES OF STREET LIGHTING EQUIPMENT BUT MAY NOT INCLUDE FACILITY, SUPPORT, REACTIVE OR PREVENTATIVE MAINTENANCE, FIXED MAINTENANCE, 18 19**OR ACCESSORY CHARGES.** 20THE DETERMINATION IN PARAGRAPH (I) OF THIS **(II)** 21PARAGRAPH SHALL BE IN ACCORDANCE WITH: 22APPROVED METHODS OF DETERMINATION FOR 1. 23**UNMETERED STREET LIGHTS; OR** 242. BASED ON INFORMATION RECEIVED FROM 25LIGHTING CONTROLS THAT MEASURE USAGE AND COMPLY WITH ANSI C12.20.5 26STANDARDS FOR ACCURACY. 27FOR STREET LIGHTING EQUIPMENT IN USE IN A COUNTY (3) **(I)** 28OR MUNICIPALITY ON OCTOBER 1, 2014, THE ALTERNATIVE ENERGY ONLY 29TARIFF SHALL USE CALCULATION METHODS AND RATES THAT EXISTED ON 30 **OCTOBER 1, 2014**. 31**(II)** THE ALTERNATIVE ENERGY ONLY TARIFF SHALL 32PROVIDE FOR REASONABLE RATES FOR STREET LIGHTING EQUIPMENT THAT IS

33 ADOPTED AFTER OCTOBER 1, 2014.

8

SENATE BILL 979

1(4) THE ALTERNATIVE ENERGY ONLY TARIFF SHALL PROVIDE2FOR OPTIONS FOR VARIOUS STREET LIGHTING CONTROLS, INCLUDING:

3 (I) CONVENTIONAL DUSK/DAWN OPERATION USING 4 PHOTOCELL TECHNOLOGY OR SCHEDULING CONTROLS;

5 (II) SCHEDULE-BASED DIMMING OR ON/OFF CONTROLS 6 THAT DIM OR TURN OFF STREET LIGHTS DURING PERIODS OF LOW ACTIVITY; 7 AND

8 (III) ACTUAL USAGE AS PROVIDED BY CONTROLS THAT 9 PROVIDE THAT INFORMATION AND COMPLY WITH ANSI C12.20.5 FOR 10 ACCURACY.

11 (C) WITHIN 60 DAYS AFTER RECEIVING AN ALTERNATIVE ENERGY ONLY 12 TARIFF FROM AN ELECTRIC COMPANY, THE COMMISSION SHALL ISSUE A 13 DECISION REGARDING THE ADOPTION OF THE ALTERNATIVE ENERGY ONLY 14 TARIFF.

15 (D) WITHIN 60 DAYS AFTER RECEIPT OF A REQUEST FOR RESOLUTION, 16 THE COMMISSION SHALL ISSUE A DETERMINATION ON A DISPUTE REGARDING 17 THE TERMS OF AN ALTERNATIVE ENERGY ONLY TARIFF ADOPTED IN 18 ACCORDANCE WITH THIS SECTION.

19 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly 20 determines that the amendment to the Maryland Constitution proposed by Section 1 21 of this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of 22 the Maryland Constitution concerning local approval of constitutional amendments do 23 not apply.

SECTION 4. AND BE IT FURTHER ENACTED, That the amendment to the 2425Maryland Constitution proposed by Section 1 of this Act shall be submitted to the 26qualified voters of the State at the next general election to be held in November 2014 27for their adoption or rejection pursuant to Article XIV of the Maryland Constitution. 28At that general election, the vote on this proposed amendment to the Constitution 29shall be by ballot, and upon each ballot there shall be printed the words "For the 30 Constitutional Amendment" and "Against the Constitutional Amendment," as now 31provided by law. Immediately after the election, all returns shall be made to the 32Governor of the vote for and against the proposed amendment, as directed by Article 33 XIV of the Maryland Constitution, and further proceedings had in accordance with 34Article XIV.

35 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act is 36 contingent on the passage of Section 1 of this Act, a constitutional amendment, and its 37 ratification by the voters of the State. 1 SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions 2 of Section 5 of this Act, this Act shall take effect on the proclamation of the Governor 3 that the constitutional amendment, having received a majority of the votes cast at the 4 general election, has been adopted by the people of Maryland.