

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 835 (Senator Lee)
 Education, Health, and Environmental Affairs

County and Municipal Street Lighting Investment Act

This bill authorizes a local government, subject to specified requirements, to (1) convert its street lighting service to an alternative-energy-only tariff established under the bill; (2) submit a request to acquire the street lighting equipment, as defined, from the electric company at some or all locations within the county or municipality; and (3) enter into an agreement to purchase electricity for the use of the street lighting equipment from any available electricity supplier. If the county or municipality and the electric company fail to agree to the purchase price or conditions of purchase of the street lighting equipment, the county or municipality may acquire the equipment by condemnation, subject to specified requirements. The bill also specifies several related findings by the General Assembly. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Special fund expenditures for the Public Service Commission (PSC) increase by \$83,900 in FY 2021. Future years reflect ongoing costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. The bill is not anticipated to otherwise materially affect State finances or operations.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$83,900	\$76,300	\$78,000	\$80,600	\$83,300
SF Expenditure	\$83,900	\$76,300	\$78,000	\$80,600	\$83,300
Net Effect	\$0	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential meaningful benefit for local governments that acquire street lighting equipment under the bill. The effect of any change in service tariffs for local governments cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Street lighting equipment” means all equipment owned by an electric company used to light streets in a county or municipality, and includes (1) all capital equipment as defined in Federal Energy Regulator Commission (FERC) Account 373; (2) lighting ballasts, fixtures, mast arms, photocells, loops, and any other equipment necessary for the conversion of electric energy into street lighting equipment; (3) decorative street and area lighting; (4) solid-state light-emitting diode (LED) lighting technologies; and (5) induction lighting technologies. It does not include joint use utility poles on which the equipment is fixed.

“Fair market value” means the net book value of the property, calculated using FERC accounting methods, and not using methods other than those used for standard rate setting, as the original cost of property, less depreciation, of any active or inactive existing street lighting equipment installed in the county or municipality as of the date the local government enters into an agreement to purchase the property, exercises its right of condemnation, or requests the removal of the equipment.

Process for Acquiring Street Lighting Equipment

After giving 60 days’ written notice to the electric company and PSC, a local government that receives street lighting service from an electric company in accordance with a tariff providing for the use by the local government of street light equipment owned by an electric company may:

- convert its street lighting service to an alternative-energy-only tariff established under the bill;
- acquire the street lighting equipment from the electric company at some or all locations within the county or municipality; and
- enter into an agreement to purchase electricity for the use of the street lighting equipment from any available electricity supplier.

If the local government and the electric company fail to agree to the purchase price or conditions of purchase of the street lighting equipment, the county or municipality may acquire the equipment by condemnation.

If a local government acquires street lighting equipment from an electric company and converts the service to an alternative-energy-only tariff, the county or municipality must pay the fair market value for the equipment.

After acquiring street lighting equipment under the bill, a local government may request that the electric company remove the street lighting equipment that has not been acquired from the electric company. The local government must pay the electric company for the cost of the removal of the street lighting equipment and the fair market value of the equipment removed.

Any agreement or contract for sale of or license agreement that applies to equipment mounted on joint use poles may not include any fees or other costs not included in the alternative-energy-only tariff established under the bill. An electric company may not require from a local government exercising its option to acquire street lighting equipment under the bill (1) any protections or indemnifications or (2) any standards the electric company does not currently provide or require of itself in the operation and maintenance of street lighting equipment.

Responsibilities of Local Governments after Acquisition

A local government that acquires street lighting equipment under the bill is responsible for maintaining the equipment, may contract with an outside entity for the maintenance, and must notify the electric company of any alteration to the local government's street lighting equipment inventory within 30 days after the alteration.

All workers employed by the local government to operate and maintain street lighting equipment must be fully qualified and meet any federal and State requirements.

Dispute Resolution

Except for condemnation proceedings, any disputes between a local government and an electric company related to a local government acquiring street lighting equipment under the bill must be submitted to PSC for resolution. PSC then has 60 days to issue a determination. In a condemnation proceeding, a jury in the proceeding must determine the fair market value as provided for in the bill. PSC must also issue a determination on a dispute regarding the terms of an alternative-energy-only tariff within 60 days.

Alternative-energy-only Tariff

By December 1, 2020, each electric company, in consultation with the Maryland Energy Administration, must file with PSC an alternative-energy-only tariff for street lighting that includes only electric distribution fees, as specified. For street lighting equipment in use in

a county or municipality on October 1, 2020, the tariff must use the calculation methods and rates that existed on that date. The tariff must provide for reasonable rates for street lighting equipment that is adopted after October 1, 2020.

Within 60 days after receiving an alternative-energy-only tariff from an electric company, PSC must issue a decision regarding the adoption of the tariff.

Current Law: “Electric company” means a person who physically transmits or distributes electricity in the State to a retail electric customer.

An electric company, on written request by a local government, must sell to the local government some or all of the company’s street lighting equipment that is located within the local jurisdiction at a price equal to fair market value. A local government that purchases street lighting is responsible for ongoing maintenance and may contract with an outside entity for maintenance services. Any dispute between a local government and an electric company regarding the purchase of street lighting equipment must be submitted to PSC for resolution.

The power to take, or condemn, private property for public use is one of the inherent powers of state government. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state. Both the federal and State constitutions limit the condemnation authority and establish two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Second, the party whose property is being taken must receive “just compensation.” In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property. However, the Maryland Constitution does authorize “quick-take” condemnations in limited circumstances prior to a court proceeding.

Background: Chapters 554 and 555 of 2007 authorized local governments to purchase and maintain street lighting equipment. A May 2007 letter from the Attorney General indicated that although the bills were approved for constitutionality, the bills must be administered properly to ensure the right to just compensation protected by the United States and Maryland constitutions. Just compensation must be provided before the government can take private property. The Acts provided for compensation based on fair market value, which is usually construed to mean just compensation. However, the Acts do not expressly provide for the amount of compensation to be determined by a jury, as required in the Maryland Constitution. The Attorney General noted that this does not render the bills invalid and that the Acts may be implemented in a constitutional manner by use of the local governments’ condemnation powers to obtain possession of street lighting equipment when the electric company objects to a sale.

State Fiscal Effect: The bill requires PSC to analyze and approve (or reject) a new class of street light tariff filings from electric companies within a restricted period of time outside of base rate cases, which are when new tariff classes are typically established. Additionally, PSC may be required to rule on submitted disputes regarding these tariff filings and/or any county or municipal government acquisition of utility street lighting, also within a restricted period of time.

Accordingly, special fund expenditures for PSC increase by \$83,882 in fiscal 2021, which accounts for the bill's July 1, 2020 effective date. This estimate reflects the cost of hiring one regulatory economist to handle the additional workload related to alternative-energy-only tariffs and dispute resolution anticipated under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$75,857
Other Operating Expenses	<u>8,025</u>
Total FY 2021 PSC Expenditures	\$83,882

Future year expenditures reflect a salary with annual increases and employee turnover and ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies as authorized under current law.

Local Expenditures: Local government expenditures for street lighting equipment may increase in the short term as local governments exercise their authority to purchase street lighting equipment. It is assumed that local government expenditures for electricity and street lighting equipment and maintenance subsequently decline as local governments install low-energy bulbs, switch to alternative-energy-only tariffs, and pay separately for street lighting equipment maintenance. The amount cannot be reliably estimated at this time but is potentially significant for local governments that currently do not own some or all of the street lights located in their jurisdictions.

Small Business Effect: Small businesses involved in the maintenance of street lighting equipment benefit to the extent that local governments exercise the option to purchase and maintain street lights, as these street lights will no longer be maintained by an electric company. Local governments may choose to contract with small businesses for street light maintenance.

Additional Information

Prior Introductions: SB 979 of 2014, a similar bill, was referred to the Senate Rules Committee, but no further action was taken. Its cross file, HB 729, received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 1034 (Delegate Carr, *et al.*) - Economic Matters.

Information Source(s): Public Service Commission; Maryland Energy Administration; Judiciary (Administrative Office of the Courts); Baltimore City; Kent, Montgomery, Washington, and Worcester counties; cities of Salisbury and Westminster; towns of Bel Air and Leonardtown; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2020
mm/lgc

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