

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1549 (Delegates Niemann and Carr)  
Rules and Executive Nominations

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Local Government - Street Lighting Equipment

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This bill specifies items that a jury must consider in a condemnation proceeding brought forth by a local government to acquire street lighting equipment. In determining the amount of an award, jurors must consider the age, condition, operability of the equipment; any payment made by a local government for the construction or maintenance of the equipment; and any fees associated with the use of space on a pole, lamppost, or other mounting surface used for street lighting equipment lost to the electric company due to the condemnation of the street lighting equipment. The bill also clarifies that a local government may acquire street lighting equipment either at a price agreed upon between a local government and an electric company or at a price as awarded by a jury in a condemnation proceeding. A local government may seek to acquire all street lighting equipment in its jurisdiction through a single petition.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** Potential meaningful benefit for local governments that seek to acquire street lighting equipment through condemnation proceedings.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** Upon request from a local government, an electric company is required to sell some or all of its street lighting equipment located within the local jurisdiction at a price equal to fair market value. Any dispute between a local government and an electric

company regarding the purchase of street light equipment must be submitted to the Public Service Commission (PSC) for resolution.

The power to take, or condemn, private property for public use is one of the inherent powers of state government and, through the state, its political subdivisions. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state. Both the federal and State constitution 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 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 bill was approved for constitutionality, it was noted that the bill 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 Act provided for compensation based on fair market value, which is usually construed to mean just compensation. If a dispute arises as to the value paid by the government, the Attorney General notes that local governments may use their condemnation power to obtain control of the necessary equipment if they cannot come to an agreement with the electric company.

The Maryland Municipal League (MML) notes the some local governments have attempted to negotiate with electric companies to purchase street lights but have not been able to reach an agreement on the terms of sale or an appropriate price. PSC advises that one local government, the Village of Chevy Chase Section 3, has requested assistance to resolve a dispute regarding the purchase of street lighting equipment. The village has been trying to purchase street lighting equipment from Pepco and replace the brackets and bulbs with induction lights in an effort to reduce electricity consumption and reduce maintenance expenses. The village currently spends one-third of its monthly utility bill on a maintenance charge imposed by Pepco. The PSC Office of External Relations conducted a mediation session between Chevy Chase Section 3 and Pepco, but a resolution was not reached. If the village is unable to agree on a purchase price with Pepco, the village may seek to acquire street lighting equipment through condemnation.

**Local Fiscal Effect:** MML advises that for metered street lights on metal poles without overhead high voltage lines attached, maintenance is competitive and local governments have a choice of the maintenance service provider. This competition allows the municipality to save money on maintenance costs, select from a wide array of choices for

lamp and luminaire, and facilitate potentially faster response to reports of street light outages. Because of distance restrictions regarding high voltage lines, this option is not currently available in the case of street lights on wooden poles with overhead high voltage lines attached that are owned by electric companies. Requiring a jury to consider the age, condition, as well as expenditures the local government has made for street lighting equipment when considering a price may result in a price being determined that is more favorable to a local government. Legislative Services advises that the bill may not have an impact on the price awarded by a jury, as an electric company must receive just compensation; however, if an award provided by a jury is lower than the price which would otherwise be negotiated, a local government may recognize some savings when purchasing street lighting equipment.

**Small Business Effect:** If a local government purchases street lighting equipment and contracts with a small business for the maintenance of the street lighting equipment, small businesses may be positively impacted.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Village of Chevy Chase Section 3, City of Frederick, City of Havre de Grace, Charles County, Frederick County, Montgomery County, Somerset County, Judiciary (Administrative Office of the Courts), Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 30, 2010  
mpc/hlb

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