

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 712 (Delegate Carr)  
Economic Matters

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**Street Lighting - Purchase of Equipment by Local Government and Tariff**

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This bill specifies requirements for a local government to acquire, maintain, or replace street lighting equipment. In addition, an electric company must replace specified street lighting fixtures with light-emitting diode (LED) fixtures, or the most approved current technology fixtures, upon the written request of a local government. Electric companies must also adjust tariff schedules to reflect specified changes.

The bill takes effect July 1, 2012.

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**Fiscal Summary**

**State Effect:** None. The Public Service Commission (PSC) can implement the bill with existing budgeted resources.

**Local Effect:** Potential meaningful benefit for local governments that seek to acquire street lighting equipment through condemnation proceedings. Potential reduction in local government expenditures relating to the maintenance of street lighting equipment. Potential impact on local finances to the extent that counties or municipal corporations opt to use LED street lighting.

**Small Business Effect:** Minimal.

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## Analysis

### **Bill Summary:**

#### *Condemnation Proceedings*

If a local government purchases street lighting equipment, it must pay the fair market value, as determined by an agreement between the local government and an electric company, or as determined in a condemnation proceeding. In a condemnation proceeding for street lighting equipment, in determining the fair market value, the jury must consider specified information. A local government may include all street lighting equipment it seeks to acquire within its jurisdiction from a single electric company in a single petition for condemnation. PSC must act as the agent of the local government in a condemnation proceeding upon written request from the local government.

#### *Acquisition and Maintenance of Street Lighting Equipment*

If a local government acquires street lighting equipment, it must ensure that the maintenance of the equipment is performed in accordance with appropriate electrical standards or accepted industry practices. An electric company must revise its tariff schedule to remove maintenance and rental fees and associated provisions for the acquired equipment.

A local government that owns street lighting equipment may maintain its own street lighting equipment if appropriate electrical safety standards and accepted industry practices are followed and if the equipment has a fuse kit or other means of disconnecting conductors of the circuit owned by the local government from its source of supply. The electric company that provides electricity to the local government for its street lighting equipment must provide specified contractor information and a training program to certify maintenance personnel. A local government may replace lighting fixtures if the fixtures meet specified performance and safety criteria. The electric company that supplies electricity to the local government must then revise its tariff schedule.

In addition, PSC must require each electric company to develop a tariff schedule for street lighting when the equipment is owned by a local government and attached to utility poles owned by a public service company, which must include pole attachment fees or agreements if the attachment fees or agreements are required by the electric company. Finally, if an electric company bills a local government for reactive maintenance of street lighting equipment, the bill may only be on the basis of time spent and materials used, which must be outlined in its tariff schedule.

## *LED Fixtures*

On written request from a local government, an electric company must install LED fixtures, or fixtures that use the most current approved technology, on some or all of the electric company's existing street lighting equipment that is located in the local jurisdiction, provided that the fixtures meet specified requirements. The electric company that installs the new fixtures must revise its tariff schedule to include (1) fees for fixture installation on a time and material basis; (2) incorporate billing wattage for the selected technology; and (3) provide an option for maintenance and rental fees and associated provisions reflect the selected technology.

**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:**

### *Purchase and Maintenance of Street Lighting Equipment*

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.

### *LED Fixtures*

A 2008 U.S. Department of Energy study on the feasibility of LED technology calculated energy savings from LED bulbs at 50% to 70% compared to high pressure sodium (HPS) bulbs, while still providing equivalent or improved lighting performance. The study also found that the payback period for a retrofit (from HPS to LED on an already-existing street light) ranged from 7.4 years to 20.4 years. Such advancements have created a desire to shift from traditional street lights to LED street lights in some jurisdictions, which include cities in Maine, Iowa, California, and Pennsylvania. Further, LED technology has been tested in large-scale applications. For example, the Los Angeles Bureau of Street Lighting has replaced 62,000 street lights with LEDs and realized a 60% savings on energy costs, equating to \$2.36 million annually.

In PSC case number 9217 – Phase II, the Potomac Electric Power Company (PEPCO) testified on an LED Street Light Pilot Project, noting preliminarily favorable data. Under the proposal, PEPCO would allow its county and municipal customers to opt to use LED street lighting instead of mercury vapor or HPS lights. The case is pending as of January 2012.

**Local Fiscal Effect:** In a condemnation proceeding, requiring a jury to consider the age, condition, type, equipment operability, PSC expert advice, as well as any payment made by a local government for the construction of the 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.

Adding a disconnect switch in addition to a fuse kit increases the cost of maintaining street lights. Local government expenditures decrease to the extent that they opt to use a preexisting fuse kit instead of an additional disconnect switch on street lighting equipment they own and maintain. Baltimore County reports that requiring a form of disconnect other than a fuse kit would be impractical and costly in its acquisition of street lighting equipment.

Local government expenditures increase to the extent they choose to retrofit street lighting equipment with LEDs, which would be followed by a decrease in local government expenditures over time from reduced electricity and maintenance costs. For example, Harford County owns and maintains 51% of its street lights, while the rest are still owned by electric companies. The county pays approximately \$292,000 annually for the energy usage of all the lights. The county reports that it could retrofit the street lighting equipment that it currently owns for approximately \$1.3 million over three years, and that it would realize significant reductions in electricity and maintenance costs over time. Legislative Services notes that potential savings in Harford County range from approximately \$75,000 to \$104,000 in annual electricity costs, but cannot reliably estimate the potential savings related to maintenance costs.

**Additional Comments:** The bill permits a local government that owns street lighting equipment to maintain it if the equipment has a fuse kit or any other means of disconnecting conductors of the circuit. PSC regulations (COMAR 20.50.02.02) adopt both the National Electrical Safety Code, which all State public service companies are required to comply with, and the National Electrical Code (NEC), which all nonpublic service companies are required to comply with. PSC advises that the bill's provision that allows a local government to maintain street lighting equipment with only a fuse kit conflicts with NEC, which defines a fuse as an over-current protective device. NEC consistently requires a means of disconnection in addition to a fuse.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Garrett, Harford, and Montgomery counties; Public Service Commission; Judiciary (Administrative Office of the Courts); Los Angeles Bureau of Street Lighting; U.S. Department of Energy; Department of Legislative Services

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