

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 729
Economic Matters

(Delegate Carr, *et al.*)

County and Municipal Street Lighting Investment Act

This bill proposes a constitutional amendment to authorize the General Assembly to pass a law allowing a county or municipality (local government) to immediately take privately owned street lighting equipment installed in its jurisdiction on payment to the owner of an amount that the local government estimates to be the net book value, using only Federal Energy Regulatory Commission (FERC) accounting methods, provided that the law also requires the payment of any further sum that may be subsequently awarded by the Public Service Commission (PSC). The constitutional amendment defines “net book value” as the original cost of the property, less depreciation. The bill also includes implementing provisions, contingent upon the adoption of the constitutional amendment by the voters of Maryland.

The constitutional amendment must be voted on in the November 2014 general election. The section of the bill contingent upon adoption of the constitutional amendment takes effect on the proclamation of the Governor that the constitutional amendment has been adopted.

Fiscal Summary

State Effect: It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections’ budget. Assuming passage of the constitutional amendment, PSC can implement the bill with existing budgeted resources.

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: “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 FERC Accounts 373; (2) lighting ballasts, fixtures, mast arms, photocells, loops, and other equipment necessary for the conversion of electric energy into street lighting equipment; (3) decorative street and area lighting; (4) solid-state LED lighting technologies; and (5) induction lighting technologies. It does not include joint use utility poles on which the equipment is fixed.

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 exercises its option to purchase street lighting equipment from an electric company and convert the street lighting service to an alternative energy only tariff, the local government must pay the fair market value to the electric company.

After exercising this option, 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 net book value of the equipment removed.

“Net book value” in the bill is (1) 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 local government exercises its right of acquisition or (2) determined in a proceeding before PSC.

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.

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. 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.

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.

Energy Only Tariff

By December 1, 2014, 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. The electric only tariff must provide for monthly bills for street lighting that must include a schedule of electricity charges based on a determination of annual kilowatt-hour usage per lumen rating or nominal wattage of all types of street lighting equipment. The electric only tariff may not include facility, support, reactive or preventative maintenance, fixed maintenance, or accessory charges.

For street lighting equipment in use in a county or municipality on October 1, 2014, the alternative energy 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, 2014.

The tariff must provide for options for various street lighting controls, including (1) conventional dusk/dawn operation using photocell technology or scheduling controls; (2) schedule-based dimming or on/off controls that dim or turn off street lights during periods of low activity; and (3) actual usage as provided by controls that comply with specified standards.

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. PSC must also issue a

determination on a dispute regarding the terms of an alternative energy only tariff within 60 days.

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: Rhode Island passed a similar law related to local governments acquiring street lighting equipment in 2013. The law authorizes the same type of acquisition and maintenance of street lighting equipment by local governments, subject to similar conditions. The text of the Rhode Island legislation, enacted as Chapter 245 of 2013, can be found at <http://webserver.rilin.state.ri.us/PublicLaws/law13/law13245.htm>.

According to a press release by the State of Rhode Island General Assembly, in Massachusetts, at least 70 cities and towns have purchased their streetlights and have saved between 15% and 70% on their streetlight expenses.

In Maryland, 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 U.S. 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 Expenditures: State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Expenditures: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

If the constitutional amendment is adopted by the voters of Maryland, 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 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 who 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: None.

Cross File: SB 979 (Senator Raskin) - Senate Rules.

Information Source(s): Public Service Commission; Office of People's Counsel; Maryland Energy Administration; Maryland Association of Counties; Maryland Municipal League; Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; State of Rhode Island General Assembly; Department of Legislative Services

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